

IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA  
NO. 29443

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TERESA BURGI, INDIVIDUALLY, AND TERESA BURGI, AS GUARDIAN  
AD LITEM FOR KALEB RAYMOND BURGI,

Plaintiffs and Appellants,

vs.

EAST WINDS COURT, INC.,

Defendant and Appellee.

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APPEAL FROM THE CIRCUIT COURT  
FIRST JUDICIAL CIRCUIT  
YANKTON COUNTY, SOUTH DAKOTA

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THE HONORABLE DAVID KNOFF  
CIRCUIT JUDGE

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**APPELLANTS' BRIEF**

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## **PRELIMINARY STATEMENT**

Throughout this brief, Plaintiff and Appellants will be referred to by “Appellant” and/or “Burgi”. Defendant and Appellee will be referred to as “Defendant” or “East Winds Court”. All references to the transcript of the Summary Judgment proceeding September 22, 2020 shall be referred to as “SJ 09/22/20” followed by the appropriate page number(s). All references to the transcript of the Summary Judgment proceeding of September 25, 2020 shall be referred to as “SJ 09/25/20” followed by the appropriate page number(s).

## **STATEMENT OF JURISDICTION**

Appellant appeals from the Summary Judgment entered by Honorable David Knoff of the Second Judicial Circuit in favor of Appellee on September 25, 2020. Appellant brings appeal pursuant to SDCL § 15-26A-3(4). Notice of Appeal was filed on October 23, 2020. (R.A. 1000).

## **REQUEST FOR ORAL ARGUMENT**

Appellants hereby respectfully request oral argument on the issues set forth in this appeal.

## **STATEMENT OF THE ISSUES**

*East Winds Court, Inc.* is the owner of a trailer court in Yankton, South Dakota. *East Winds Court, Inc.* is owned by Attorney John Blackburn from Yankton, S.D. It leased one of its’ lots to tenant Pasman. Pasman owned a large, aggressive, territorial Pitbull dog named “Marco” who attacked K.R.B., a minor. The trial court found that

*East Winds Court, Inc.* did not have actual knowledge of the dangerous propensities of the dog and therefore, it was not liable for K.R.B.'s injuries.

- VI. Whether there are genuine issues of material fact that *East Winds Court, Inc.* knew that the dog was dangerous?

The trial court concluded that no questions of material facts exist.

- *Rowland v. Log Cabin, Inc.*, 658 N.W. 2d 20 (S.D. 2003)
- *Clausen v. Kempffer*, 477 N.W. 2d 257, 1991 S.D. LEXIS 176
- *Gertsema v. State Farm*, 778 N.W.2d 609 (S.D. 2010)
- *St. Onge Livestock co. v. Curtis*, 2002 SD 102, 650 N.W.2d 537

- VII. Whether there are genuine issues of material fact as to whether *East Winds Court, Inc.*'s property manager had actual knowledge of the Pitbull's dangerous propensities?

The trial court concluded that no questions of material facts exist.

- *Dakota Provisions, LLC v. Hillshire Brands Company*, 226 F. Supp. 3d 945 (S.D. 2016)
- *Boe v. Healy*, 168 N.W.2d 710, 713 (S.D. 1969)
- S.D.C.L § 59-6-5
- *Aetna Life Ins. Co. v. McElvain*, 363 N.W.2d 186 (1985)
- S.D.C.L § 59-6-9
- *Hass v. Wentzlaff*, 816 N.W. 2d 96 (S.D. 2012)

- VIII. Whether there are genuine issues of material issue of fact concerning the landlord's negligence in the common area?

The trial court concluded that no questions of material facts exist.

- *Smith v. Lagow Constr. & Dev. Co.*, 202 SD 37, 642 N.W. 2d 187, 2002
- *Boe v. Healy*, 84 S.D. 155, 168 N.W. 2d 710 (1969)

- *Norris v. Chicago, M., St. P. & P.R. Co.*, 74 S.D. 271, 273, 51 N.W.2d 792, 793 (1952).
- *Walther v. KPKA Meadowlands Ltd. Partnership*, 581 N.W.2d 527, 535

IX. Whether the Pitbull's attack was foreseeable based upon the totality of the circumstances?

The trial court concluded that no questions of material facts exist.

- *Rowland v. Log Cabin, Inc.*, 2003 S.D. 20, 658 N.W. 2d 76, 2003
- *McGuire v. Curry*, 766 N.W.2d 501 (S.D. 2009)
- *First American Bank & Trust, N.A. v. Farmers State Bank*, 756 N.W.2d 19, 26 (S.D. 2008)
- *Boe v. Healy*, 84 S.D. 155, 159-160, 168 N.W.2d 710, 712-13 (1969)

X. Whether the trial court erred in granting summary judgement?

The trial court concluded that no questions of material facts exist.

- *Rowland v. Log Cabin, Inc.*, 2003 S.D. 20, 658 N.W. 2d 76, 2003
- *Continental Grain Co. v. Heritage Bank*, 548 N.W.2d 507
- *Gertsema v. State Farm*, 778 N.W.2d 609 (S.D. 2010)
- *St. Onge Livestock co. v. Curtis*, 2002 SD 102, 650 N.W.2d 537
- S.D.C.L. § 15-6-56(a)

### **STATEMENT OF THE CASE**

Teresa Burgi filed suit against *East Winds Court, Inc.* on October 8, 2019 in the Circuit Court, First Judicial Circuit, Yankton County. (R.A. 1) This is a dog bite case wherein K.R.B., a minor, was attacked by a tenant of East Winds Court's dog, the owner of the trailer park. East Winds Court, Inc. moved for *Summary Judgment* (R.A. 97). On

September 28, 2020, the Circuit Court the Honorable David Knoff granted *East Winds Court, Inc.* 's Motion for Summary Judgment (R.A. 989) and Order Granting Defendant's Motion for Summary Judgment pursuant to SDCL § 15-6-56(a) (R.A. 989-990). The trial court found that Burgi failed to prove that *East Winds Court, Inc.* had actual knowledge of the dangerous propensities of the dog and as such could not be held liable for injuries to K.R.B. On October 23, 2020 Burgi filed Notice of Appeal appealing the trial court's granting of summary judgment in favor of *East Winds Court, Inc.* (R.A. 1000).

### **STATEMENT OF THE FACTS**

*East Winds Court, Inc.*, is an older trailer park court, located in rural Yankton County, South Dakota. It has 68 units. There are many dogs there, and many young children. (RA 604, Galvin Deposition page 12 lines 8-25). Tenants are required to sign a lease when they move in. Lot rent is \$165.00 per month. (RA 755, R. Pasman Deposition page 6 line 12).

John Blackburn is an attorney practicing in Yankton, South Dakota. He owns several rental properties. (RA 568, Blackburn Deposition page 5 lines 5-8). He has been in the rental business as an owner for over 50 years. (RA 571, Blackburn Deposition page 8 lines 21-22). Blackburn purchased *East Winds Court, Inc.* in 2005. (RA 569, Blackburn Deposition page 6 lines 5-7).

Blackburn wrote the lease that Pasman signed. (RA 577, Blackburn deposition page 14 lines 12-15). The express language of the lease limits pets to "harmless, non-vicious, safe pets." At the time of his statement to the insurance adjuster on March 12,

2018 Blackburn could not even remember whether or not the lease had any language in it about animals. Blackburn told the insurance adjuster:

- Q. Okay. Is there any verbiage in there about animals?  
A. I don't know.

(R.A. 736).

At the time of his deposition Blackburn did not think that *East Winds Court* had any actual written leases. (RA 574, Blackburn deposition page 11 lines 7-9). Later he admitted that he looked the leases over and assisted in drafting them. (RA 577, Blackburn deposition page 14 lines 12-15).

Blackburn testified that he personally visited *East Winds Court, Inc.* on average 6 times per year. (RA 574, Blackburn deposition page 11 lines 17-18). Since Pasman moved into East Winds Court in 2010 that means that Blackburn had personally inspected the trailer park at least 42 times at the time that K.R.B. was mauled. Blackburn testified:

- Q. And in that time would you see dogs in the court?  
A. I don't have an independent recollection of that, but I'm sure that I've seen dogs in the court.

(RA 574, Blackburn deposition page 11 lines 21-22).

Ron Galvin is the property manager for *East Winds Court, Inc.* (RA 578, Blackburn deposition page 15 lines 7-20). Galvin worked for John Blackburn properties for over twenty-three (23) years. (RA 597, Galvin Deposition page 5 line 23). Galvin testified that he monitored the trailer park. He testified that he drove through it every single day. (RA 600, Galvin deposition page 8 lines 22-23).

- Q. When you would visit East Winds, as you stated on a regular or daily basis, what did you do when you would go there on a daily basis?

A. What did I do when I went on there?

Q. Correct.

A. I would drive up and down the courts, make sure the lots were clean, cars weren't parked on the street during the winter so I could do the snow removal. Anything that was a violation of the rules or maybe I saw as a coming problem, I would check it out.

(RA 601, Galvin deposition page 9 lines 21-25, and page 10 lines 1-5).

Galvin also knew about the no dangerous or vicious dog provisions in the lease.

Galvin testified:

A. No, I'm not. We had a pet policy, just that they not have-non-vicious and it couldn't be-disturb the neighbors and stuff like that. It was never you can't have pets.

Q. Okay. Are you aware that some -the leases included a no vicious animal policy?

A. I know-yes, it's a no vicious animal policy.

(RA 602, Galvin deposition page 10 lines 17-23).

Mari Pasman (Ron Pasman's daughter) was the original owner of the Pitbull. (RA 923, M. Pasman deposition page 5 lines 4-14). The Pitbull was inappropriately teased while living with Mari. (RA 932, M. Pasman deposition page 41 lines 22-25 and RA 933 page 42, lines 1-6). The Pitbull was a very strong dog. (RA 933, M. Pasman Deposition page 42 lines 11-13). The dog was also a "jumper". He would jump on people. He was high strung and needed lots of exercise. (RA 925, M. Pasman deposition page 12 lines 3-4 and lines 16-18). Marie Pasman lived in a small confined apartment (very similar in size to her Dad's trailer at East Winds trailer park). (RA 925 M. Pasman deposition page 13, lines 15-21). Therefore, several years ago, Mari gave the Pitbull to Pasman. When she gave the dog to her father, she bought two Beware of the Dog signs and helped post them on the front of his trailer. (RA 926 M. Pasman deposition page 14, lines 9-14). The Beware of the Dog signs were visible from the road in front of Pasman's trailer at East

Winds Court trailer park. (RA 926 M. Pasman deposition page 15, lines 4-11. Mari believed that people should really stay away from him. (RA 932 M. Pasman deposition page 38, lines 23-25).

Ronald Pasman has been a long-term tenant living in a trailer at *East Winds Court, Inc.* having moved in in 2010. He has a forty-year-old trailer, single wide. (RA 755 R. Pasman deposition page 7, lines 1-4). His lease was a month-to-month lease. Specifically, ¶ 14 of the lease provided (in pertinent part):

14. This is a month-to-month lease unless otherwise specified in writing and requires TENANT to give LANDLORD in WRITING at least thirty (30) days' notice before vacating the premises. (RA 945)

(See also, RA 614, Galvin Deposition page 22 lines 19-21). Furthermore, according to the express language of the lease he signed with *East Winds Court, Inc.* Pasman was not allowed to have any vicious or mean animal. (RA 573 Blackburn deposition page 10 lines 3- 6). Specifically, ¶section 13 of his lease stated:

13. PETS: TENANT assumes all responsibilities for pets. Dogs are only allowed on TENANT'S property. Dogs are not allowed to run free in East Winds Court. Barking of dogs, day or night is not allowed. Only harmless, non-vicious, safe, pets such domestic dogs, housecats and indoor birds are allowed within East Winds Court, Inc. without the prior written permission of the LANDLORD. TENANTS are prohibited from keeping any other type or description of pet or animal or reptile. If a TENANT has a noisy pet such as a barking dog, the TENANT will have to purchase at the TENANTS own expense a muzzle and keep it on his /her dog at all times to prevent barking.

(RA 945).

The Pitbull was originally given to Pasman four years before it attacked K.R.B. by his daughter, Mari Pasman, because she could no longer keep him due to noise



complaints from all of his barking. (RA 908 Eagleman deposition page 7 lines 17-25, page 8 line 1). Pasman described the dog as a big dog, just as big as any German Shepard, husky, big boned, with big muscles. (RA 755 R. Pasman deposition page 9, line 25 to RA 756 page 10, line 3). The dog lived his life on the end of a thick 10 to 12-foot-long heavy chain, secured to the hitch on the front of Pasman's trailer. (RA 756, R. Pasman deposition page 11 line 13-15). (RA 909 Eagleman deposition page 10 lines 18-21). Pasman never kept the dog in the backyard but only on the chain in front of his trailer. (RA 909 Eagleman deposition page 10, lines 22-24). The dog was secured to the trailer hitch chained with a body harness because it was so big and strong. (RA 756, R. Pasman deposition page 11 lines 17-22). There was no fence or kennel to contain the dog. (RA 911, Eagleman deposition page 20 lines 16-18). It was a pure-bred Pitbull. (RA 760 R. Pasman deposition page 28, lines 19-20). Pasman testified that he had the dog principally for protection. (RA 760, R. Pasman deposition page 26 lines 5, 11). As Pasman indicated in his deposition, if you want to come for him you have to "go through my dog" first. (RA 775, R. Pasman deposition page 88 lines 3-4). He testified that the dog was a headstrong, big bodied dog with aggressive tendencies. (RA 764, R. Pasman deposition page 43 lines 9-11, RA 772 page 77 lines 18-19, and 22, RA 775, page 87 lines 20-25, and RA 775, page 88 lines 1-4). He wanted an aggressive dog, so that any other dog that came around him or his house his Pitbull "would tear them up." (RA 760 R. Pasman deposition page 26, lines 7-8). Pasman believed that the trailer court was a rough place. "You've got more thieves here than you can have on Goddamn Rikers Island. I see what goes on here." (RA 763, R. Pasman deposition page 38 lines 23-25). Ominously, he stated that the insurance adjuster who came to take his statement after the

Burgi attack was “lucky I didn’t have the dog then.” (RA 761, R. Pasman deposition page 33 lines 12-13). Because the truth is as Pasman testified, “I got a dog here and you’re going to end up getting hurt.” (RA 763 R. Pasman deposition page 38, lines 11-12).

Immediately after getting the Pitbull Pasman put two "Beware of Dog" signs out front of his property to warn the public, other trailer court residents and *East Winds Court, Inc.* management of the Pitbull’s danger to the public. (RA 761, R. Pasman deposition page 30 line 1 and RA 774 page 84, line 15). Pasman testified that you would have had to have been blind not to see the two large posted Beware of Dog signs. (RA 763, R. Pasman deposition page 39 line 15). "I got a dog here and you're going to end up getting hurt". (RA 763, R. Pasman deposition page 38 lines 11-12). It should also be noted that the dog had had previously been in fights with other dogs. (RA 910, Eagleman deposition page 16 lines 22-23).

Teresa Burgi is a long-term tenant of *East Winds Court, Inc.* having lived there for the past fifteen years. (RA 580 Blackburn deposition page 17 lines 23-25) (RA 548, Burgi deposition page 6 line 16). Teresa Burgi is in her early forties raising three (3) boys by herself. (RA 548, Burgi deposition page 6 line 8). Unfortunately, all three of her boys have disabilities. (RA 550 Burgi Deposition page 13, lines 22, RA 550 page 14, line 3-5). She is K.R.B.’s mother. K.R.B. has significant cognitive disabilities. (RA 550 Burgi deposition page 13, line 22).

K.R.B., at the time of the incident, was a twelve (12) year old boy who had been previously diagnosed with severe autism. (RA 550, Burgi deposition page 14 line 9 and RA 550, page 15, line 5-7). He was on an independent education plan (IEP) at his school

because of his severe learning disabilities. (RA 550 Burgi deposition page 15, line 25, RA 550, page 16, line 1, RA 552 page 22, line 19-22). K. R. B. is small for his age. The Pitbull was every bit as big as K.R.B. if not bigger. (RA 764 R. Pasman deposition page 43, lines 9-14).

Pasman had this large, dangerous Pitbull on the premises in violation of the express terms of the Pasman lease. The consequences to Pasman for violating the lease were substantial. The very first page of the East Winds Court lease agreement with Pasman provided that:

The breach, default, failure, or violation of any one of the terms of this lease, without limitation of other rights, shall entitle LANDLORD to terminate this lease, re-enter and take over possession forthwith.  
(R.A. 943).

Galvin gave varied and competing stories about what he knew about the dog. Galvin's statements include the following:

It just seems like a dog and it was always way back at the end of his lot, so I really never got to know the dog. He didn't even bark when I came up to the house, so I really\_ they don't have to-they are not required to tell me they have a pet unless it on our property, and then um-you know, one of our homes, and then I just explain to them the rules and everybody knows you can't let your dog run loose and outside of your yard[.]

Galvin statement to adjuster. (RA 482).

A: No, I knew it was-it was a fairly good-sized dog, but it wasn't huge. I am-I don't think it's as big as my lab, but I don't know. Somewhere in-like I said, it wasn't close enough to really know, I don't remember because like I said, it was in the back and I never went back to introduce myself to the dog. You know how that goes.

Galvin statement to adjuster. (RA 484). Galvin denied even knowing that Pasman's dog was a Pitbull. (RA 603, Galvin Deposition page 11 lines 9-12).

Janice Anderson, Mr. Pasman's next door neighbor, was all too aware of the dog and the very real danger he posed. Anderson was afraid of the dog. She knew that it was aggressive. If anyone even came anywhere near it, the pit bull would get physically aggressive with that person. Even when she mowed the lawn, the dog was so aggressive that he would literally try to bite her lawnmower. She noted that "You shouldn't walk up to this dog." It barked at every passerby. She believed that it would attack anyone within his reach. Anderson stated that the dog never should have been allowed into the trailer court in the first place. Anderson believes that *East Winds Court, Inc.* was well aware of it and that they knew it was dangerous. (RA 877 & 878 Affidavit of Janice Anderson ¶5, ¶8, ¶9, ¶10, ¶13, ¶14, ¶15 and ¶16).

J.E. and E.S. are Pasman's grandsons. They are about the same age as K.R.B. (RA 765, R. Pasman deposition page 48 lines 3-8). They had stayed with Pasman at times over the years. (RA 908, Eagleman deposition page 7 line 2). During that time frame, Pasman always had the dog. (RA 908 Eagleman deposition page 6, lines 23-25 and page 7, lines 1-2). K.R.B. lived about 3 trailers down from Pasman. K.R.B. is someone that J.E. and E.S. knew well and who they frequently played with. (RA 914 Eagleman deposition page 30, lines 17-19).

On September 3, 2017, the date of the incident, that morning, K.R.B. went over to the common area to play basketball with J.E. and E.S. (RA 765, R. Pasman deposition page 48 lines 1-19). The basketball hoop was located on the Street in front of and directly next to where Pasman had the dog chained to the hitch in front of his trailer. (RA 765, R. Pasman page 48 lines 9-24). It was common for the neighborhood boys to play basketball in the common area, (the private street in front of Pasman's trailer.) (RA 909

Eagleman deposition page 11 lines 15-25, and RA 909 page 12, lines 14, RA 768, page 58 lines 5-8). Of course, while playing basketball the ball would sometimes bounce further out in the street or go under a parked car or bounce up by Pasman's trailer. (RA 909 Eagleman deposition page 12, lines 3-14). No one ever told the boys not to play basketball in the street. (RA 910 Eagleman deposition page 13, line 24 to RA 910, page 14 line 1). The basketball hoop was located right outside Pasman's home on a private dead-end street, solely owned and maintained by *East Winds Court, Inc.* (RA 765, R. Pasman deposition page 48 lines 17-24). This was in the exact same spot on the road where the young boys had played basketball many times before. (RA 915 Eagleman deposition page 34, lines 17-25, and RA 915 page 35 lines 1-6). While playing basketball, predictably a ball bounced and went onto Pasman's leased property near to where the dog was chained up behind Pasman's van. (RA 908 Eagleman deposition page 6, lines 7 and 8). K.R.B. went to retrieve the ball and the dog brutally ran him down from behind and attacked him, tearing his face apart. In Pasman's words the dog "went off on him." (RA 756, R. Pasman deposition page 11 line 5).

It should be noted that at no time did K.R.B. provoke or startle the dog. (RA 911 Eagleman deposition page 17 lines 7-10). The dog was not hit by the basketball or disturbed in any manner. (RA 911 Eagleman deposition page 19 lines 3-7). K.R.B. had never previously teased Marco. (RA 915 Eagleman deposition page 34, lines 12-13). In short, there was no reason for the dog to attack, other than it was a large, aggressive, territorial Pitbull.

*East Winds Court, Inc.* through Galvin and Blackburn knew about the dog. Blackburn stated in his statement given to United Fire Group on March 9, 2018:

Q. Okay. So, the property manager and yourself were not aware of the tenant dog much less it being a pit bull. Now this pit bull is chained outside. Is this something that the manager never observed or yourself?

A. I-I never did. Whether my property manager did, I don't know. When I see chained, he could have been just tied, but he was in Mr. Pasman's [sic] yard.

Q. Mm-hm. Okay. So we-we do not know if he actually had a collar and leash on him.

A. Oh, he was-the was-um-the dog was restrained. He was tethered, but I don't know whether it was a chain or a rope or what. (Blackburn Statement dated 3/12/18 page 3).

Later in his deposition, Blackburn expounded on his knowledge:

Q. Were you aware that Ron Galvin, the property manager at the time, was aware of the pit bull residing at Mr. Pasman's property?

A. No. In fact his statement says he thought it looked more like a lab mix.

(RA 577 Blackburn deposition page 14 lines 20-24).

According to Ron Pasman, "everybody knew I had a dog. The whole neighborhood knew that he had a dog." (RA 759 R. Pasman deposition page 24, line 25 to page 25, line 1 and RA 760 page 29, line 3). Pasman testified that Galvin knew about the Pitbull. (RA 760, R. Pasman deposition page 29 lines 19-20). Similarly, J.E. testified:

Q. All right. Do you think that all of the neighbors knew that your grandpa had Marco?

A. Yeah.

Q. How would they have known that, Josh?

A. Because he's outside all the time.

(RA 913 Eagleman deposition page 26, lines 9-13.)

*East Winds Court, Inc.* never took any steps in the previous four to five years to ascertain the dangerous propensities of this large, strong Pitbull constrained on a thick chain link that jumped on people, barked and was definitely a danger to the neighbors with two "Beware of Dog" signs publicly posted on the front of the trailer, all right next

to a basketball hoop on common property. This “looking the other way” on the Pitbull was done despite the express prohibition in their own lease. This utterly foreseeable and preventable mauling could have been and should have been prevented. The property manager of *East Winds Court, Inc.*, Galvin, admits that he drove by the property almost every day. (RA 600, Galvin deposition page 8 lines 22, 23) Galvin admits that it was his duty to maintain the common area of the property and to inspect the properties for hazards, including dangerous dogs. (RA 602, Galvin deposition page 10 lines 3-4, and RA 606 page 14 line 21-22). Had Galvin simply moved the basketball hoop in the common area away mere feet away from where the dangerous pit bull was chained, this would have been prevented. Has Blackburn and/or Galvin simply enforced their own lease, this never would have happened.

After this incident *East Winds Court, Inc.* began investigating and enforcing its’ own written lease and removing dogs from the trailer court. In fact, the trailer court removed several other dangerous dogs only *after* the Burgi mauling took place. (RA 587, Blackburn deposition page 24 line 7-10). Galvin talked to Pasman after Burgi was mauled and told him to get rid of the dog and to not get another Pitbull. (RA 775 R. Pasman deposition page 87, lines 5-8). On September 21, 2017 (about two weeks after the Burgi mauling) East Winds Court issued an “Open letter to all tenants of East Winds Court” which stated in pertinent part:

In the last couple of months we have had some serious problems with dogs in the Court... So for now no Pitbull’s, Rottweiler’s or Doberman’s will be allowed in the court... We are taking this very seriously. If there is a dog that is aggressive in any way...[i]t will have to be removed from the court or that tenant will have to move.

(R.A. 480).

So clearly, *East Winds Court* was aware that they were having “serious problems with dogs in the court.” And *East Winds Court* confirmed in the September 21, 2017 that it retained power over the leased property: “[i]t will have to be removed from the court or that tenant will have to move.” (R.A. 480). *East Winds Court* also clearly knew that it was having problems with dogs in the court for at least a period of “months” *i.e.*, in the time prior the Pitbull’s attack on K.R.B. This neglect was despite *East Winds Court*’s knowledge that it was having problems with dogs in the court. And, it should be noted, that it is only after the incident that the basketball hoop was promptly taken down. (RA 774, R. Pasman deposition page 85 lines 1-3).

Based upon the Pasman lease the Pitbull should never even have been at the trailer park. Blackburn's statements as to the lease are equivocal and inconsistent. He testified that "I don't think that we had written leases." (RA 574, Blackburn deposition page 11 lines 7-9). Blackburn identified Pasman as “[n]ot a problem tenant.” (Blackburn Statement March 12, 2018 page 5). And certainly, there is economic incentive for a landlord to rent 68 trailer court units out at \$165.00 per month and simply look the other way when half the trailer court had dogs, including Pitbulls and other large dangerous dogs. Only *after* the Burgi attack that East Winds Court force the removal of the other Pitbulls and aggressive dogs in the trailer court.

### **STANDARD OF REVIEW**

This is an appeal from the trial court’s grant of *East Winds Court, Inc. ’s Motion for Summary Judgment*. The standard of review for Summary Judgment is well settled. The reviewing court must determine whether the moving party has demonstrated the absence of any genuine issue of material fact and showed entitlement to judgment on the



merits as a matter of law. The evidence must be viewed most favorably to the nonmoving party and reasonable doubts should be resolved against the moving party. *Cowan Bros., L.L.C. v. Am. State Bank*, 743 N.W. 2d 411, 416 (2007). This Court’s task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was correctly applied. *Northstar Mutual Ins. Co. v. Rasmussen*, 734 N.W. 2d 352, 356 (S.D. 2007). In doing so, the Court undertakes an independent view of the record. *Id.* “The burden of proof is upon the movant to show clearly that there is no genuine issue of material fact, and that he is entitled to judgment as a matter of law.” *Id.*

### **ARGUMENT**

This is not a case that can be decided on Summary Judgment. Summary Judgment should not be granted except in the rare case where the moving party has established the right to judgment with such clarity as to leave no room for controversy. *Rehm v. Lenz*, 547 N.W. 2d 560 (S.D. 1996). Summary judgment is proper only where no genuine issue of material fact is present, and judgment should be awarded to the movant as a matter of law. *Id.* On a motion for summary judgment, the record must be viewed in a light most favorable to the non-moving party, and reasonable doubts should be resolved against the moving party. *Cowan Brothers L.L.C. v. American State Bank*, 743 N.W.2d 411, 416 (S.D. 2007). Summary judgment is generally not feasible in actions where there is conflicting testimony as to material facts. *Laber v. Koch*, 383 N.W.2d 490 (S.D. 1986). Similarly, summary judgment is not generally appropriate in cases involving questions of negligence. *Satterlee v. Johnson*, 526 N.W.2d 256 (S.D. 1995); *Wilson v. Great Northern Ry. Co.*, 83 S.D. 207, 157 N.W.2d 19 (1968).

The law of premises liability is based on possession and control. W. Keeton, D. Dobbs, R Keeton, D. Owen, Prosser, and Keeton on the Law of Torts 57, at 386. The general rule regarding a landlord's liability is a landlord having parted with full possession of the premises to the tenant is not liable for injury to third persons caused by the tenant's negligence. *Wiggins v. Pay's Art Store*, 47 S.D. 443, 447, 199 N.W. 122, 123 (1924). There are many exceptions to this rule. *Clausen v. Kempffer*, 477 N.W.2d 257 (S.D. 1991). One significant exception is where the lessor retains control of a common area of the premises which the lessee is entitled to use as appurtenant to the leased portion. *Boe v. Healy*, 84 S.D. 155, 168 N.W.2d 710 (1969). Courts have imposed liability on landlords where the landlord had knowledge that the tenant may carry on activities on the premises that unreasonably expose third parties to the risk of physical injury. (See, *Clausen v. Kempffer*, 477 N.W.2d 257 (S.D. 1991) *citing*, *Strunk v. Zoltanski*, 62 N.Y.2d 572, 468 N.E.2d 13, 15, 479 N.Y.S.2d 175 (1984) (tenants owned vicious dogs of which landlord was aware), additionally, as noted above, liability may attach where, as here, the landlord reserves a right of re-entry, and where he reserves any right to control what activities were performed on the land or how they were conducted. *Clausen v. Kempffer*, 477 N.W.2d 257 (S.D. 1991). (See also, *Englund v. Vital*, 838 N.W.2d 621 (S.D. 2013) (Justice Konenkamp (Concurring in result) (The question is whether the landlord retained control)).

## **ISSUE I**

**THERE ARE GENUINE ISSUES OF MATERIAL  
FACT AS TO WHETHER EAST WINDS COURT, INC.  
HAD ACTUAL KNOWLEDGE OF THE PITBULL'S  
DANGEROUS PROPENSITIES.**

As will be set forth from an analysis of the facts below, *East Winds Court, Inc.* knew about the Pitbull and that it was dangerous. And, whether or not East Winds Court, Inc. knew about the dangerous Pitbull is a question of fact for the jury to decide. (See, *Rowland v. Log Cabin, Inc.*, 658 N.W.2d 20 (S.D. 2003).

Blackburn testified that he did not personally know that Pasman had a Pitbull prior to September 2017. (RA 579, Blackburn deposition page 16 lines 17-19, RA 587, page 24 line 24). Of course, later in his deposition Blackburn confessed to having talked to Pasman, and that Pasman told him the Pitbull had never bitten anyone. (RA 588, Blackburn deposition page 25 lines 2-3). It should be noted that Blackburn testified that he personally drove up and down the trailer park a half dozen times per year. (RA 574, Blackburn deposition page 11 lines 17-18). Blackburn acknowledged that the trailer court had restrictions on the types of animals a tenant was allowed to have at the trailer court. (RA 574, Blackburn deposition page 11 line 25 to RA 575, page 12 lines 1-2). Furthermore, Blackburn gave a recorded statement to an insurance adjuster and stated that he knew about the Pitbull and that it was chained to the front of the trailer. (Recorded Statement of John Blackburn dated 03/9/18). (Appendix Exhibit 13).

Blackburn testified that in the years prior to the Burgi mauling he never saw the two large "Beware of Dog" signs affixed to the front of Pasman's trailer. (RA 582, Blackburn deposition page 19 lines 1-5). Blackburn testified that if he had only saw the "Beware of Dog" signs he would have followed up on the dangerous propensities of the Pitbull. (RA 582 Blackburn deposition page 19). Blackburn maintains that he would have investigated. "Somebody puts up a beware of dog sign, they must have knowledge that their dog could be a problem, and we're just not allowing problem dogs, then or now, if we know about them." (RA 582, Blackburn deposition page 19 lines 8-11). He testified that he would have had the Pitbull removed from the trailer park. (RA 585, Blackburn deposition page 22 lines 15-18). Following the Burgi attack

by the Pitbull, Blackburn had at least 3 to 4 other Pitbulls removed from the trailer court. (RA 587, Blackburn deposition page 24 lines 7-13).

This Pitbull was a dangerous, large, strong, protective, and territorial Pitbull dog with two "Beware of the Dog" signs who spent its life on a chain secured to the hitch in front of Pasman's trailer. A headstrong Pitbull. (RA 772, R. Pasman deposition page 77 lines 18-19). Anyone who passed by would believe that the dog was indeed dangerous. (RA 933 M. Pasman Deposition page 42, line 25 and page 43, lines 1-4). Pasman wanted it to be dangerous. The Pitbull was there for protection. (RA 760 R. Pasman deposition Page 26, lines 5, 11, RA 764, page 43 lines 4-7).

Janice Anderson, Pasman's immediate next-door neighbor, certainly knew that the Pitbull was dangerous. She saw the dog daily on its' chain. She was afraid of it. She knew that it was very aggressive. If anyone came near it, it would lash out and try to attack. When she tried to mow her own lawn, it would try to bite her lawnmower. She stated "[y]ou shouldn't walk up to this dog." It barked at all passersby. It would attack anyone within the reach of its' chain. Anderson believes that the Pitbull was so dangerous that it never should have even been allowed in the trailer park. Anderson believes that East Winds Court was aware of it and how dangerous it was. (R.A. 877, Janice Anderson Affidavit lines 4-17) Blackburn, the owner of *East Winds Court* indicated in his deposition that he had not ever seen the two large "Beware of Dog" signs until his deposition. (RA 581, Blackburn deposition page 18 lines 23-25, RA 582 page 19 lines 1-2). Specifically, Blackburn testified:

- Q. Do you see the picture there where it has the van in the driveway with the beware of the dog signs on the front of the trailer?
- A. I did not see that before but I do now. Yes, I see that.

- Q. So you've never seen that – in times that you've been on the premises, you've never seen those signs?
- A. No, I can assure you, I did not see those signs or I would have taken action.
- Q. What action would you have taken?
- A. I would have investigated. Somebody puts up a beware of the dog sign, they must have some knowledge that their dog could be a problem, and we're just not allowing problem dogs, then or now, if we know about them.

(RA 581 Blackburn deposition page 18 lines 23-25, RA 582 page 19 lines 1-11).

Blackburn admits that they would have investigated, and should have investigated, if they had known about the signs, and that the signs put them on notice that the dog was a problem. (RA 582, Blackburn deposition page 19 lines 8-11).

Additionally, he admits that at the time of the injury “we’re just not allowing problem dogs.” The lease Blackburn prepared specifically prohibited this type of animal. In other words, here the landlord testified that the trailer court reserved the right of re-entry and reserved the right to control what was allowed on the leased premises. *Clausen v. Kempffer*, 477 N.W.2d 257 (S.D. 1991).

It should be noted that the facts in *Clausen* are a far cry from the facts herein. In *Clausen*, the premises were leased by the tenant on October 1, 1987 and the tenant took possession. *Id.* at page 258. The landlord then moved to San Diego, California. On October 10, 1987, just 10 days after taking possession of the leased premises, a third party was injured on the leased premises. In *Clausen*, the landlord reserved no right of re-entry, and he did not reserve any right to control what happened on the leased premises or how they were conducted. *Id.* at page 261.

In sharp contrast, here, Pasman lived on the leased premises for many years (pursuant to a month to month lease). For five years Pasman had a large Pitbull for

protection in violation of his lease agreement with East Winds trailer court trailer park.

Here, East Winds Court did not part with full possession of the leased premises. The very first page of the East Winds Court lease agreement with Pasman provided that:

The breach, default, failure, or violation of any one of the terms of this lease, without limitation of other rights, shall entitle LANDLORD to terminate this lease, re-enter and take over possession forthwith.

(R.A. 943).

In the present case, not only did *East Winds Court* have the express right to re-enter and take over possession of the leased premises, it also retained control over the dogs and other animals allowed on the leased premises. Specifically, ¶13 of his lease stated:

13. PETS: TENANT assumes all responsibilities for pets. Dogs are only allowed on TENANT'S property. Dogs are not allowed to run free in East Winds Court. Barking of dogs, day or night is not allowed. Only harmless, non-vicious, safe, pets such domestic dogs, housecats and indoor birds are allowed within East Winds Court, Inc. without the prior written permission of the LANDLORD. TENANTS are prohibited from keeping any other type or description of pet or animal or reptile. If a TENANT has a noisy pet such as a barking dog, the TENANT will have to purchase at the TENANTS own expense a muzzle and keep it on his /her dog at all times to prevent barking. (RA 945)

And it is not enough for *East Winds Court* to look the other way and subjectively state that they “didn’t know.” The South Dakota Supreme Court has previously established that summary judgment is inappropriate where defendants subjectively claim rules proscribing conduct and that their rules were enforced as a material issue of fact existed as to the very existence of the rules, the scope of the rules, and the enforcement of the rules. *Gertsema v. State Farm*, 778 N.W.2d 609 (S.D. 2010). Thus, whether or not *East Winds Court* enforced its’ own lease is a genuine issue of material fact. Id.

Pasman had two Beware of the Dog signs posted literally on the front of his trailer, mere feet from the common property (the private road) at *East Winds Court*. Furthermore, the landlord, or his agent certainly in the five years Pasman had the Pit Bull must have seen the signs. (RA 768 R. Pasman deposition page 60, lines 11-17). *East Winds Court, Inc.* either ignored the obvious problem for years and did nothing or it did know about the obvious problem and did nothing about it. In either event, East Winds Court cannot simply now claim subjective ignorance in this tragically preventable attack. Of course, after K.R.B. was mauled, Blackburn called Pasman and told him on no uncertain terms that either the dog goes or he has to leave the park immediately. (RA 579 Blackburn deposition page 16 lines 7-10). Pasman got rid of the dog. (RA 775, R. Pasman deposition page 86 lines 13-16).

Blackburn's testimony is contradictory. He did not know about the leases, later he wrote the leases, the leases had provisions about no vicious dogs. Which of those competing statements is true? Similarly, Blackburn testified that he didn't know about the dog, then he testified that he talked with Pasman about the dog and Pasman told him it had never bitten anyone, and third that he knew he had a dog but it was always chained up to the front of Pasman's trailer (right next to the two large Beware of Dog signs). What is a reasonable jury to conclude based upon those varied and competing statements? A jury needs to listen to Blackburn's, Galvin's, Anderson's and Pasman's testimony and decide for itself the facts and decide what (if any) of this testimony is credible. Summary judgement should not be granted in this case based upon the subjective statement "I didn't know." Blackburn's various statements and testimony are inconsistent and equivocal.

Summary judgment requires not only that there be no genuine issue of material fact, but also that there be no genuine issues on *inferences* to be drawn from those facts. *St. Onge Livestock Co., Ltd. v. Curtis*, 650 N.W.2d 537 (S.D. 2002). A reasonable juror could reasonably infer from these facts presented that East Winds trailer court, Blackburn and/or Galvin knew about the dog and that it was dangerous. A reasonable juror, upon examining this evidence, might reach different conclusions than the trial court. At the very least, genuine issues of material fact exist in this case making summary judgment inappropriate in this case. The case should be tried on the merits. *Dahl v. Sittner*, 429 N.W.2d 458 (S.D. 1988).

## **ISSUE II**

### **THERE ARE GENUINE ISSUES OF MATERIAL FACT AS EAST WINDS COURT, INC.'S PROPERTY MANAGER HAD ACTUAL KNOWLEDGE OF THE PITBULL'S DANGEROUS PROPENSITIES.**

Again, Galvin was *East Winds Court's* property manager for many years at the trailer park. (RA 219 Galvin deposition page 5, line 23). As such, Galvin had actual authority conferred upon him by Blackburn and *East Winds Court, Inc.* to manage all aspects of the trailer park. S.D.C.L. § 59-3-2. Under South Dakota law, the principal may be held responsible for the agent's negligent acts or omissions. *Dakota Provisions, LLC v. Hillshire Brands Company*, 226 F. Supp. 3d 945 (S.D. 2016).

Galvin testified that he stopped and talked to Pasman one time "a couple of months ago" when he first saw the dog. Galvin stated in his recorded statement to the insurance adjuster:

A: No. I don't know. Awe, man. I would guess he had the dog three or four months and what he had said to me is it was a daughter a relative or something



and he took it temporarily and that's all I know, uh-and that was-that just came up in conversation. He didn't strike me as the type of guy to go out and buy a dog because he lives by himself and he works, it's kind of hard to take care of a pet.

(Galvin Statement to insurance adjuster. Page 2). (RA 482). Additionally, Galvin told the insurance adjuster:

- A. I don't know if he was watching it or he took it because they couldn't take care of it. It was-it was just kind of a grey area. He just said it was so-and-so's dog. And like I say my hearing is bad. He said it was so-and-so's dog and I just got it and so that was \_\_\_\_\_.

(R.A.482). Then, in his sworn deposition testimony, Galvin testified that he first learned that Pasman had the Pitbull:

- A. I would say at least a couple of months before the incident, at least, if not a little bit longer. I went – I was driving by, I saw the dog. He didn't have a dog so I stopped to ask him and talk to him about it, and he told me that the dog was temporary. And I think he said it was actually his daughter's dog, but she couldn't keep it where she was so – he said I guess I got a dog for a little while. I think that was the whole conversation. And I saw the dog, you know, so I moved on.

(RA 615, Galvin deposition page 23 lines 5-13)

Later, also in his statement to the insurance adjuster, Galvin stated as follows:

- A. ...No, with-with this dog, I didn't even know. It just seemed like a dog and it was always way back at the end of his lot, so I really never got to know the dog. He didn't even bark when I came up to the house, so I really \_\_\_\_\_ they don't have to- they are not required to tell me they have a pet unless it's on our property, and then um-you know, one of our homes, and then I just explain to them the rules and everybody knows that you can't let your dog run loose and outside of your yard.

(Galvin statement to insurance adjuster page 2). (R.A. 482). Of course, Pasman never once had the dog in the backyard. Never. (RA 771, R. Pasman deposition page 71 line 24 to RA 771, page 72 lines 1-9).

Of course, none of that is true. The very reason that Pasman even had the dog in the first place was because his daughter could no longer keep him due to noise complaints from all of his barking. (RA 908 Eagleman deposition page 7 lines 17-25, page 8 line 1). While living with Pasman, the dog lived his entire life on the end of a

thick 10 to 12-foot-long heavy chain, secured to the hitch on the front of Pasman's trailer. (RA 756, R. Pasman deposition page 11 line 21). (RA 909 Eagleman deposition page 10 lines 18-21). There was no fence or kennel to contain the dog. (RA 911 Eagleman deposition page 20, lines 16-18). Pasman had the dog at East Winds trailer court for at least four years leading up to the incident. (RA 755, R. Pasman deposition page 9 line 25).

A landlord is deemed to have knowledge of a dangerous condition when the condition existed for such a period of time as to justify the conclusion that, in the exercise of ordinary care, he should have known of its existence within such time as would have given him a reasonable opportunity to remedy the condition or where the exercise of reasonable care he could have discovered the defective condition and made it safe. Knowledge may be implied from the long-continued existence of the defect. *Boe v. Healy*, 168 N.W.2d 710, 713 (S.D. 1969) (citations omitted).

Pasman testified that he had the Pitbull for four to five *years* before the K.R.B.'s injury (not the couple of months that Galvin testified to). Galvin testified that he drove through the trailer court multiple times a day, every day, back and forth. Galvin was "always out there" i.e., at the trailer park. (RA 771, R. Pasman deposition page 72 line 11). That works out to over a thousand times that Galvin drove right past the Pasman's "Beware of the Dog" signs and yet claimed that he never noticed them. ("No. Like I said, I haven't seen them, or I don't – I'm not aware of them.") (RA 607 Galvin Deposition page 15 lines 6-7). The beware of the dog signs were quite visible from the private road in front of Pasman's trailer. (RA 772, R. Pasman deposition page 74, lines 1-25). A reasonable juror may not believe that Galvin drove by the property every day

for four or five years and never once noticed the two large signs nailed to the front on Pasman's trailer.

Pasman believed that Galvin knew all about the Pitbull: Pasman testified:

Q. So Ron Galvin knew about the dog?

A. Yeah.

Q. Yes?

A. Everybody knew about it, yeah.

Q. And Ron Galvin knew you had the beware of the dog signs up?

A. Yeah, everybody saw them.

(RA 768, R. Pasman deposition page 60 lines 11-17).

The legal effect of Pasman's knowledge is clear.

S.D.C.L. § 59-6-5 provides as follows:

As against a principal both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

(Emphasis added). The fact that the knowledge of the agent was not actually communicated to the principal will not prevent operation of this rule of agency law.

*Aetna Life Ins. Co. v. McElvain*, 363 N.W.2d 186 (1985).

In *Boe v. Healy*, 84 S.D. 155, 168 N.W. 2d 710 (1969), a landlord was found liable for a chimney defect that led to a fire 18 months after a tenant had signed a lease of the property. The court noted "The condition in the chimney existed for such a length of time that defendant in the exercise of due care should have discovered it." That legal proposition holds here. A reasonable landlord, a reasonable property manager for a trailer park, in a four to five year time frame, would have noticed the two "Beware of Dog" signs, learned of the purposes for keeping the dog (which was for protection) and investigated the dog, discovered its' dangerous, headstrong behavior, talked to the neighbors about it and would have taken decisive action to remove the Pitbull from the

trailer park or ordered that the tenant build a fenced in kennel. None of that happened here.

Galvin's negligence *is* East Winds Court's negligence. S.D.C.L. § 59-6-9 states (in pertinent part) that:

[A] principal is responsible to third persons for the negligence of his agent in the transaction of business of the agency[.]

Thus, *East Winds Court* is responsible for the negligence of Galvin. This is the rule of *respondeat superior*. Under the doctrine of *respondeat superior* the question of whether the act or omission occurred by the agent, is a question of fact for the jury. *Hass v. Wentzlaff*, 816 N.W.2d 96 (S.D. 2012).

Galvin knew about the Pitbull and the "Beware of Dog" signs.

- Q. And in that picture, there are two beware of dog signs posted on his trailer. Have you seen those?
- A. I don't remember seeing them, but I can't say for sure.
- Q. But you would drive by his—his trailer every day, as you said, and you never noticed the beware of dog signs when you would drive by his property?
- A. This was over two years ago. I was just ending my management time, and I don't recall seeing the beware of dog signs.

(RA 605 Galvin deposition page 13 lines 22-25).

Thus, Galvin's deposition testimony is equivocal. "I don't remember seeing them but I can't say for sure." In Galvin's statement to the insurance adjuster, he stated "it wasn't my \_\_\_\_\_ I didn't see it, so I didn't do anything." (A key word is obviously left blank. Burgi's assume that Galvin's statement to the insurance adjuster actually reads as follows: "it wasn't my fault, I didn't see it, so I didn't do anything.") Later in his

Deposition, Galvin testified that ‘I don’t recall seeing beware of dog signs. (RA 606, Galvin deposition page 14 lines 5-6).

Pasman certainly believed that Galvin *knew* about Pasman’s dog and saw the “Beware of Dog” signs. (RA 768, R. Pasman deposition page 60 lines 15-17). At the very least, genuine issues of material fact exist making summary judgment inappropriate in this case.

### **ISSUE III**

#### **THERE ARE GENUINE ISSUES OF MATERIAL FACT CONCERNING THE LANDLORD’S NEGLIGENCE IN THE COMMON AREA.**

A landlord has a duty to maintain the safe physical condition of the common areas. *Smith v. Lagow Construction & Developing Co.*, 642 N.W.2d 187 (S.D. 2002).

Where a landlord reserves control over a portion of the premises, a failure to carefully maintain that area creates tort liability. *Boe v. Healy*, 84 S.D. 155, 168 N.W. 2d 710 (1969).

*East Winds Court* allowed and countenanced having a basketball hoop/basketball court on its’ private street in the trailer park directly in front of Pasman’s leased concrete slab. The basketball hoop was located in the common area in front of Pasman’s trailer, where the dangerous Pitbull was chained up and two “Beware of Dog” signs were placed. (RA 611, Galvin deposition page 19 lines 12-17). Galvin testified that it was his job to maintain the common area of the property. (RA 602, Galvin deposition page 10 lines 1-5).

Q. Okay. The one that has the basketball hoop, are you aware that children played basketball in the street?

A. No.

Q. Is that against the policy of East Winds Court, Inc.?

- A. Well, I don't know that we've ever had a policy about kids playing in the street. I mean, it's common sense, you shouldn't do it. I would think that would be a parental responsibility.

(RA 581, Blackburn deposition page 18 lines 7-14).

Similarly, Galvin testified:

- Q. And so you're aware that children would play basketball there in the street at all?
- A. I can't see which way the basket is facing, but evidently, they might have, yeah?

(RA 611, Galvin deposition page 19 lines 24-25, RA 612, page 20 lines 1-2).

As a general rule, the “possessor of land owes an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety and is liable for the breach of such duty.” *Norris v. Chicago, M., St. P. & P.R. Co.*, 74 S.D. 271, 273, 51 N.W.2d 792, 793 (1952). It is true that the landlord-tenant arrangement creates no “special relationship” between the landlord and the tenant. However, landlords have a duty to maintain the safe physical condition of the common areas within their control. *Walther v. KPKA Meadowlands Ltd. Partnership*, 581 N.W.2d 527, 535. It is undisputed that the basketball hoop/court were solely on common property owned by *East Winds Court*. Therefore, *East Winds Court* had a duty to maintain the safe condition of this common area. *Id.* Here, only *after* the incident did *East Winds Court* act like a reasonable and responsible landlord would act and should act by removing the basketball hoop in its' street. A multi-tenant landlord must do more than collect the rent. Here, it was, in part, the negligence in the common area by the landlord the placement and countenance of allowing the basketball hoop on common property directly in front of the Pitbull that led to a foreseeable and tragic incident when K.R.B. was horribly mauled.

Here, it is both foreseeable and preventable that having a basketball hoop on common property directly in front of a large barking Pitbull with two Beware of Dogs signs would foreseeably cause a ball to bounce onto Pasman's property between the basketball hoop and a dangerous pit bull sitting right there would bite. *East Winds Court* violated its' duty to maintain the common area. A child playing basketball in a common area and retrieving a ball is entirely foreseeable. At the very least, a genuine issue of material fact exists making summary judgment inappropriate in this case. (See, *Rowland v. Log Cabin, Inc.*, 658 N.W.2d 20 (S.D. 2003).

#### **ISSUE IV**

#### **THE PITBULL'S ATTACK WAS FORESEEABLE BASED UPON THE TOTALITY OF THE CIRCUMSTANCES.**

The South Dakota Supreme Court has been very clear that there are two separate avenue's available to the injured to establish foreseeability and negligence in dog bite cases. *Rowland v. Log Cabin, Inc.*, 658 N.W.2d 76 (S.D. 2003). First, a plaintiff in a dog bite case may argue that the owner knew or should have known of the dog's dangerous propensities; or secondly, that under the totality of the circumstances, injury to the plaintiff was reasonably foreseeable. Id. In *Gehrts v. Batteen*, 620 N.W.2d 775 (S.D. 2001), the Court reiterated again that even when one does not know of an animal's dangerous propensities the *ordinary negligence standard of foreseeability will still be applied.* (*Rowland v. Log Cabin, Inc.*, 2003 S.D. 20, 658 N.W. 2d 76). Where an injury is foreseeable a duty may exist where not otherwise recognized. *McGuire v. Curry*, 766 N.W.2d 501 (S.D. 2009); *First American Bank & Trust, N.A. v. Farmers State Bank*, 756 N.W.2d 19, 26 (S.D. 2008).

Here, the trial court focused mainly on the first avenue of foreseeability test (knowing a dog's dangerous nature) and since Blackburn and Galvin refused to even admit that they knew about the Pitbull, the Court granted summary judgment. Here, the trial court, virtually ignored the second avenue repeatedly elucidated by this Court, to prove foreseeability, namely that one must also consider the totality of the circumstances.

“The Court notes that there's no facts to show that the defendant through John Blackburn or through the property manager Mr. Galvin had any direct knowledge of the dangerous propensity of the dog before the incident that took place where the child was injured.” (First Judicial Circuit Court's Ruling on September 25, 2020, page 4 lines 6-10).

In *Rowland*, following the totality of the circumstances test to determine foreseeability, this Court held that whether a reasonable person would have realized that a large, Akita dog in a small bar with drunken patrons involved an unreasonable risk of harm is a question of fact for the jury. Here, a reasonable person would have realized that a large dangerous Pitbull, with a lifetime spent being chained upon a leash, with neighbors that feared it, barking at passersby, with two large “Beware of Dog” signs, when small children are running around the common areas and playing basketball on a basketball court directly in front of this dangerous Pitbull created an unreasonable risk of harm to those kids, and specifically K.R.B.. It is also a question of fact for the jury. *Id.* It is a well-established principle, that when a landlord reserves control over a portion of the premises, a failure to carefully maintain that area creates tort liability. *Boe v. Healy*, 84 S.D. 155, 159-160, 168 N.W.2d 710, 712-13 (1969).

## **ISSUE V**

### **THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT.**



The South Dakota Supreme Court has repeatedly stated and specifically reiterated in dog bite cases, that questions of negligence, contributory negligence and assumption of the risk are all for the jury to determine in all but the rarest of cases so long as there is any evidence to support the case. *Rowland v. Log Cabin, Inc.*, 658 N.W.2d 76 (SD 2003). The Supreme Court in *Rowland* reiterated that the test is not solely whether the Defendant knew of any dangerous propensities of the dog. It is not the *sole* factor to be considered. Rather, the duty to foresee a risk of harm (from a dog) is dependent upon *all the surrounding facts and circumstances* and may require further investigation or inquiry. *Rowland v. Log Cabin, Inc.*, 658 N.W. 2d 76 (SD 2003).

Here, the trial court ruled that:

The Court notes that there's no facts to show that the defendant through John Blackburn or through the property manager Mr. Galvin had any direct knowledge of the dangerous propensity of the dog before the incident that took place where the child was injured.

The Court finds there were beware of dog signs on Mr. Pasman's property that were visible out front chained up from time to time and that the property manager would drive through the trailer park and had an opportunity to observe those things. The Court finds that there was – well, there was nothing presented that Mr. Galvin or Mr. Blackburn ever actually saw a beware of dog sign.

Mr. Galvin was aware that there was a dog. There's some evidence that he encountered the dog and I think maybe even touched the dog or pet the dog, but no evidence that any aggressive tendencies were shown at that time. The Court – there's no fact to show that again that the defendant or defendant's agents had any actual knowledge of any dangerousness of the dog.

(Court's Ruling, TR Page 4)(R.A. 1076 lines 6-25).

This is a misapplication of the law regarding summary judgment. The trial court placed the burden of proof on the Burgis to prove that Blackburn or Galvin admitted knowledge of the dangerous dog, that they admitted seeing the "beware of dog" signs.

The Court: But the plaintiff does have the burden of proof in this case, doesn't –  
Mr. King: No question.  
The Court: And the plaintiff has to show that East Winds had either specific knowledge of the dangerous propensities of the dog. And it sounds like there is no evidence of that.  
Mr. King: Well, I think that there is, but they haven't admitted it. If you are forcing us to say have they admitted it, no, they have not admitted it.

(Transcript of the Record of Motion Hearing dated September 22, 2020). R.A. 1046 page 11, lines 14 to 25; and page 12, lines 1-8). (R.A. 1046, 1047).

Of course, at *trial*, the plaintiff does indeed have the ultimate burden of proof. However, this was a summary judgment hearing. Therefore, *East Winds Court* carried the burden of proof to show that there was no genuine issue of material fact and that it was entitled to judgment as a matter of law. The trial court, as noted about, improperly placed the burden of proof at the summary judgment hearing on the plaintiff, who was resisting the motion, not where the burden of proof properly belongs, on the party moving for summary judgment.

Compounding the error, the trial Court at the summary judgment hearing improperly placed the burden on the plaintiffs to prove Blackburn and Galvin's subjective knowledge. The burden is not on the party resisting summary judgement to prove subjective knowledge of the adverse party. The law of summary judgment in South Dakota does not come down to the repetitious use of a tautology. If that were so, many cases would be disposed of by simply stating "I didn't know." "I didn't know." That is not the law concerning summary judgment. The *credibility* of the denials of the alleged lack of knowledge must be determined by the jury, and not resolved on a motion for summary judgment. *Continental Grain Co. v. Heritage Bank*, 548 N.W2d 507 (S.D.

1996). (Cf. *Gertsema v. State Farm*, 778 N.W.2d 609 (S.D. 2010) (summary judgment inappropriate where defendants subjectively claim rules proscribing certain conduct and that their rules were enforced as a material issue of fact exists as to the very existence of the rules, the scope of the rules, and the enforcement of the rules). Again, summary judgment requires not only that there be no genuine issue of material fact, but also that there be no genuine issues of *inferences* to be drawn from those facts. *St. Onge Livestock Co., Ltd. v. Curtis*, 650 N.W.2d 537 (S.D. 2002).

All the above demonstrates that genuine issues of material fact that prevent the Court from determining this case on a motion for summary judgment. However, here, that factual determination by the trial court is contrary to sworn deposition testimony, sworn affidavit testimony, equivocal and varied statements by Blackburn and Galvin and is clearly erroneous in ruling on a motion for summary judgment. At the very least, genuine issues of material fact exist in this case based upon the totality of the circumstances. This is not a case that can be decided on a motion for summary judgment. S.D.C.L. 15-6-56(a).

### **CONCLUSION**

Burgi's respectfully request this Court, based on the arguments above and the authorities cited, reverse the trial court's *Order* granting Summary Judgment and remand the matter back to the First Circuit for a trial on the merits.

Dated this \_\_\_\_\_ day of May, 2021.

**KING LAW FIRM, P.C.**

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*Attorney for Appellants*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that two true and correct copies of the foregoing **Appellant's Brief** was served by electronic mail upon attorney for the defendant, Mark J. Arndt of Evans, Haigh & Hinton, LLP located at 101 N. Main Ave, Ste 213, P.O. Box 2790, Sioux Falls, SD 57101-2790. The undersigned hereby also certifies that three copies of this **Appellant's Brief** was served by first class United States mail, postage prepaid, upon the Clerk of the Supreme Court, 500 East Capitol, Pierre, South Dakota 57501-5070, all on this \_\_\_\_\_ day of May, 2021.

\_\_\_\_\_  
David J. King

**CERTIFICATE OF COMPLIANCE**

In accordance with S.D.C.L. § 15-26A-66(b)(4), I hereby certify that this brief complies with the requirements as set forth in South Dakota Codified Laws. This brief was prepared using Word and contains 46,836 characters and 9,999 words. I relied on the word and character count of a word-processing program to prepare this certificate.

Dated this \_\_\_\_\_ day of May, 2021

\_\_\_\_\_  
David J. King

## **APPENDIX TO BRIEF OF APPELLANT**

Appeal No. 29443 – Burgi, et al v. East Winds Court, Inc.

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IN CIRCUIT COURT  
FIRST JUDICIAL CIRCUIT

TERESA BURGI, INDIVIDUALLY, AND  
TERESA BURGI, AS GUARDIAN AD  
LITEM FOR KALEB RAYMOND BURGI,

CIV. 19-000261

EAST WINDS COURT, INC.,

**ORDER GRANTING DEFENDANT  
EAST WINDS COURT, INC.'S  
MOTION FOR SUMMARY JUDGMENT**

RONALD PASMAN,

**Third-Party Defendant.**

At the September 22, 2020, re-hearing date, Plaintiffs were represented by their counsel, David King. Defendant East Winds was represented by its counsel, Mark Arndt, who appeared telephonically. Third-Party Defendant, Ronald Pasman, (Pro Se) did not appear.

The Court, after considering the evidence and arguments of counsel, orally announced its ruling via a 2:00 p.m. telephonic hearing on September 25, 2020. Attorneys King and Arndt participated in the Court's telephonic hearing and announcement of the Court's ruling.

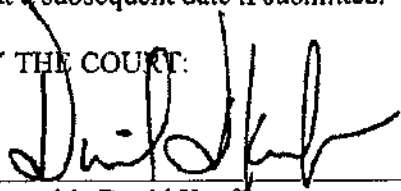
Pursuant to the Court's oral ruling, and pursuant to SDCL 15-6-56(c), the Court hereby ORDERS that East Winds' Motion Summary for Judgment is GRANTED. Considering the evidence in the light most favorable to the Plaintiff, as the non-moving party, no material fact exists that would permit a judgment in favor of the Plaintiff against Defendant East Winds. Therefore, Plaintiff's Complaint against East Winds is hereby dismissed, with prejudice.

The transcript of the Court's September 25, 2020, oral ruling is incorporated into this Order.

Pursuant to SDCL 15-17-37, the Court may consider Defendant East Winds' applications for taxation of costs and disbursements at a subsequent date if submitted.

Signed: 9/28/2020 11:19:19 AM

BY THE COURT:

  
Honorable David Knoff  
Circuit Court Judge

Attest:  
Chambers, Tracy  
Clerk/Deputy







STATE OF SOUTH DAKOTA)  
: SS  
COUNTY OF YANKTON )

IN CIRCUIT COURT  
FIRST JUDICIAL CIRCUIT

<p>TERESA BURGI, INDIVIDUALLY, AND TERESA BURGI, AS GUARDIAN AD LITEM FOR KALEB RAYMOND BURGI,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>EAST WINDS COURT, INC.,</p> <p>Defendant &amp; Third-Party Plaintiff,</p> <p>vs.</p> <p>RONALD PASMAN,</p> <p>Third-Party Defendant.</p>	<p>CIV. 19-000261</p> <p><b>PLAINTIFF'S STATEMENT OF MATERIAL FACTS IN DISPUTE IN RESISTANCE TO DEFENDANT, EAST WINDS COURT, INC.'S, MOTION FOR SUMMARY JUDGMENT</b></p>
--	--

COMES NOW the Plaintiff, Teresa Burgi, individually, and Teresa Burgi, as guardian ad litem for Kaleb Raymond Burgi, by and through their attorneys, David J. King and Kirk D. Rallis of King Law Firm, PC, files *Plaintiff's Statement Of Material Facts In Dispute In Resistance To Defendant, East Winds Court, Inc., Motion For Summary Judgment*.

**MATERIAL FACTS IN DISPUTE**

Defendant, *East Winds Court, Inc.* states the following material facts are undisputed.  
Plaintiff disputes material facts where indicated:

1. The subject of this litigation is an incident that took place on September 3, 2017, when Plaintiff, Kaleb Burgi (a minor), was bitten by a dog at the *East Winds'* trailer park  
**NOT DISPUTED.**

*East Winds Court, Inc.* is a trailer park in Yankton, South Dakota owned by attorney John Blackburn. (See, Exhibit “10”-Warranty Deed dated July 1, 2005). Blackburn has 50 years experience owning and operating rental properties. (Blackburn Deposition page 8, lines 19-21). Blackburn Housing owns over ten (10) different rental properties. (Blackburn Deposition page 5, lines 3-8).

2. Third-Party Defendant, Ronald Pasman (“Pasman”), was the owner of the dog, whose name was Marco.

**NOT DISPUTED.**

3. Plaintiffs have sued their landlord, *East Winds*, but did not sue Pasman.

**DISPUTED.**

*East Winds Court, Inc.* filed a Third-Party Complaint against Pasman.

#### **The Incident**

4. Kaleb Burgi was bitten by Pasman’s dog on the trailer lot that Pasman was renting from *East Winds*.

**DISPUTED.**

According to a statement given to the Insurance adjuster, Collin Godfrey on June 1, 2018 by Joshua Eagleman and Elijah Sorace, the boys were playing basketball in the common area on the private road owned by *East Winds* trailer park immediately next to and within mere feet of Pasman’s Pit Bull, Marco. (See, Exhibit “5”-Statement of Joshua Eagleman and Elijah Sorace). Mr. Galvin (and therefore East Winds trailer park), knew that there was a basketball hoop and basketball court right next to (within mere feet) of Marco and that it was on common property. (See

Exhibit "4"-Galvin Depo., page 19, lines 10-25 and page 20, lines 1-2).

5. The incident did not take place in a common area in the trailer court.

**DISPUTED.**

According to a statement given to the Insurance adjuster, Collin Godfrey on June 1, 2018 by Joshua Eagleman and Elijah Sorace, the boys were playing basketball in the common area on the private road owned by East Winds trailer park

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immediately next to and within mere feet of Pasman's Pit Bull, Marco. (See, Exhibit "5"-Statement of Joshua Eagleman and Elijah Sorace). Mr. Galvin (and therefore East Winds trailer park), knew that there was a basketball hoop and basketball court right next to (within mere feet) of Marco and that it was on common property. (See Exhibit "4"-Galvin Depo., page 19, lines 10-25 and page 20, lines 1-2).

6. Prior to the incident, Teresa Burgi was not even aware that Pasman had a dog, let alone any knowledge that the dog was dangerous.

**NOT DISPUTED.**

7. Teresa Burgi has no reason to believe that *East Winds* had knowledge of Pasman keeping

a dangerous dog.

**DISPUTED.**

*East Winds Court, Inc.*'s agent and property manager, Mr. Galvin, was well aware of the fact that Pasman had a dog. (See Exhibit "4"-Galvin Depo., page 11, lines 13-15). In fact, he actually stopped and talked to Pasman about the dog in the months prior to the dog bite. (See Exhibit "4"-Galvin Depo., page 23, lines 5-13). Mr. Galvin drove the lot nearly every day. (See Exhibit "4"-Galvin Depo., page 10, lines 1-5). Galvin claims that he was unaware of the "Beware of Dog" signs that Pasman publicly posted in front of his trailer. (See Exhibit "4"-Galvin Depo., page 13 lines 22-25). ("I don't remember seeing them (the Beware of Dog signs) but I can't say for sure"). Furthermore, Mr. John Blackburn, Mr. Scott Blackburn, Mr. Galvin and therefore *East Winds Court, Inc.* knew it had a "no dangerous dog" policy. (See Exhibit "4"-Galvin Depo., page 10, lines 17-20). (It should be noted that Pasman did not have a "No Trespassing" sign). At this point in time, the depositions of Pasman and the minor children playing basketball have not been taken. Blackburn testified that had he noticed the "Beware of the Dog" signs he would have taken immediate action to investigate the situation and remove Marco from the trailer park. (See Exhibit "3"-Blackburn Deposition page 19, lines 1-11).

8. Pasman's dog was not ever observed to be running around the trailer court.

**DISPUTED.**

Pasman's deposition has not been taken. Joshua Eagleman and Elijah Sorace were also playing basketball in the common area at the time of the mauling, they have not

had their depositions taken. As Plaintiff has not taken the deposition of other tenants in the *East Winds Court* property, it is unknown whether the pit-bull was ever observed running around the trailer court. What is undisputed is that Marco was behind the truck in the driveway and upon observing K.R.B. he ran him down from behind and horribly mauled him. It is unknown whether or not Marco was ever on a chain.

Furthermore, Galvin/Blackburn drafted a letter, on behalf of *East Winds Court, Inc.*, and sent the letter to all the tenants of the trailer park on September 21, 2017 (two (2) weeks after Marco mauled K.R.B.). That letter indicated that over the last several months that East Winds Court, Inc. had knowledge of dogs violating their own policies and procedures with regard to dangerous and vicious dogs. (See Exhibit “4”-Galvin Depo., page 16, lines 18-25, and page 17 lines 1-2 and 12-20). That letter indicated that going forward, *East Winds* trailer park intended to begin enforcing their own policies and procedures with regard to dangerous dogs. Id. (See Exhibit “3”-Blackburn Depo., page 9, lines 7-24).

#### Sheriff's Report

9. For further details regarding the incident, the Burgis attached a copy of the Yankton County Sheriff's Report as an Exhibit to their Complaint.

#### **DISPUTED.**

The Sheriff's Report speaks for itself. (See, Exhibit “7”-Yankton County Sheriff's Report). The letter Galvin/ Blackburn sent to tenants about all the violations of *East Winds* trailer court's own policies and procedures with regard to dangerous,

vicious dogs. (See, Exhibit "11"-Open Letter dated 09/21/2017). Also, a copy of the statements given by Joshua Eagleman and Elijah Sorace on June 1, 2018 are attached hereto. (See, Exhibit "5"-Statement of Joshua Eagleman and Elijah Sorace). Also attached is the statement of Ron Galvin taken on March 9, 2018. (See Exhibit "4"-Galvin Depo). Also attached is the veterinary clinic records from *Teachout & Franklin, Prof, LLC* (DBA) Animal Health Clinic dated June 17, 2015 to September 8, 2017. (See, Exhibit "8"-Patient History Report-Marco). Also attached are the Depositions of Mr. Galvin and Mr. Blackburn. (See, Exhibit "3"-Depo of Blackburn and Exhibit "4"-Galvin Depo).

There are numerous factual disputes between the Sheriff's Report, the statements of Joshua Eagleman and Elijah Sorace, the statement of Ron Galvin, the Deposition of Ron Galvin and the Deposition of John Blackburn. Marco's Veterinary Clinic records from *Teachout & Franklin, Prof, LLC* (d/b/a) Animal Health Clinic records identify the behavioral problems and physical problems that Marco had during the 2 ½ years before the mauling herein.

10. With a few exceptions, Teresa Burgi generally agrees with the substance of the Yankton County Sheriff's Report. (Teresa Burgi Depo., pp. 50-53, attached to SMF as Exh. 5.)  
**DISPUTED.**

The Sheriff's Report speaks for itself. (See, Exhibit "7"-Yankton County Sheriff's Report). Also, a copy of the statements given by Joshua Eagleman and Elijah Sorace on June 1, 2018 are attached hereto. (See, Exhibit "5"-Statement of Joshua Eagleman and Elijah Sorace). (See, Exhibit "12"-Statement of Ron Galvin taken on

March 9, 2018. (See Exhibit “3”-Blackburn Depo.) and Exhibit “4”-Galvin Depo.). Also attached is the veterinary clinic records from *Teachout & Franklin, Prof, LLC* (d/b/a) Animal Health Clinic dated June 17, 2015 to September 8, 2017. (See, Exhibit “8”-Patient History Report-Marco). There are numerous factual disputes between the Sheriff’s Report, the statements of Joshua Eagleman and Elijah Sorace, the statement of Ron Galvin, the Deposition of Ron Galvin and the Deposition of John Blackburn. Marco’s Veterinary Clinic records from *Teachout & Franklin, Prof, LLC* (DBA) Animal Health Clinic records identify the behavioral and physical problems that Marco had in the 2 ½ years prior to Marco’s mauling of K.R.B..

11. The Sheriff’s report indicates that Marco was chained to the hitch of Pasman’s trailer when Kaleb came onto Pasman’s lot.

**DISPUTED.**

The trailer hitch was located right next to the common area basketball hoop and court. There has been no testimony on the length and quality of the chain restraining the dog. There has been no testimony as to whether or not “Marco” was even on a chain. There has been no testimony as of yet as to whether or not Marco was improperly “picketed” near the property line. (See, Yankton City Ordinance 5-23 (1)). Galvin, on behalf of *East Winds* trailer park admits that he was aware Pasman had a dog. (See, Exhibit “4”-Galvin Depo., page 11, lines 9-12). Galvin admits that he talked to Pasman about the dog. (See, Exhibit “4”-Galvin Depo., page 23, lines 5-13). (See, Exhibit “12”-Statement of Ron Galvin taken on March 9, 2018. Galvin “doesn’t remember” seeing the “Beware of Dog” signs posted in front



of Pasman's trailer. (Galvin Deposition page 13, lines 24-25). Galvin maintains that had Pasman told him Marco was dangerous or if he had actually seen the "Beware of the Dog" signs, he would have had Marco removed from the trailer court.

(Galvin Deposition page 14, lines 19-22).

12. Kaleb walked to the location of Marco and bent down to grab a basketball lying next to Marco when Marco bit Kaleb in the face.

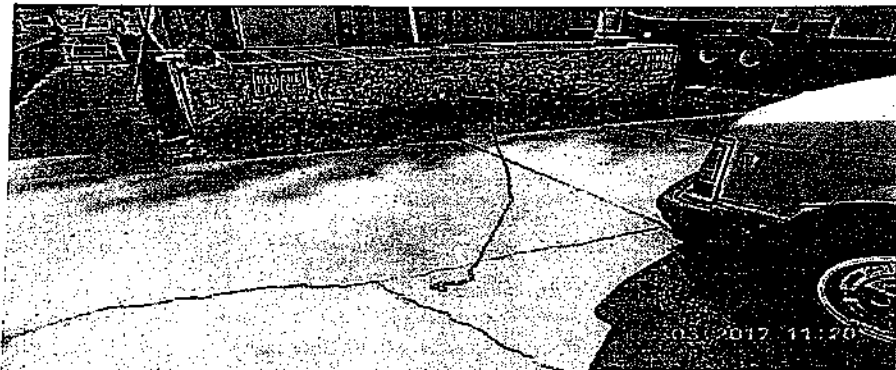
**DISPUTED.**

There has been no testimony of where the exactly the ball bounced and landed on Pasman's leased premises or indeed where K.R.B. walked exactly. As yet, there has been no testimony as to whether Marco was improperly "picketed" near a property

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line. (Yankton City Ordinance §5-23 (1).). The statements of Joshua Eagleman and Elijah Sorace indicate that K.R.B. did not see Marco as Marco was behind the parked truck in the driveway. Once Marco became aware that K.R.B. was retrieving the basketball, he came out from behind the truck and ran K.R.B. down from behind and seriously mauled him. Teresa Burgi has incurred over \$100,000.00

in medical expenses due to the unprovoked attack by Marco. K.R.B. has undergone multiple facial reconstruction surgeries from Marco's mauling. He suffers from P.T.S.D. (See, Plaintiff's Designation of Expert Witness and Disclosure of Expert Report of Dr. Mazurczak, MD).

13. The Sheriff's Report does not reference any prior incident or knowledge, by anyone, of dangerous or vicious behavior by Marco.

**DISPUTED.**

Pasman had knowledge of the dangerous and vicious behavior of the dog. He posted two "Beware of Dog" signs on the front of his trailer. (See, Exhibit "7"-Yankton County Sheriff's Report). Galvin knew about the dog in the months prior to this vicious attack. (See, Exhibit "4"-Galvin Deposit page 23, lines 5-13).

Certainly, Ron Galvin and therefore *East Winds Court, Inc.* should have observed the "Beware of Dog" signs posted in the front of Pasman's trailer and realized that the dog violated their own policy. Also, as stated previously, Mr. Galvin, on behalf of *East Winds Court, Inc.*, sent a letter to all the tenants of the trailer park on September 21, 2017. That letter indicated that over the last several months that East Winds Court, Inc. had knowledge of dogs violating their own policies and procedures with regard to dangerous dogs from the trailer court. It went on to specifically ban certain dog breeds known to be dangerous and vicious from the trailer court including specifically Pit Bulls. (See, Exhibit "11"-Open Letter dated 09/21/2017). (See, Exhibit "4"-Galvin Deposition page 17, lines 12-20).

**Trailer Court Leases**

14. Teresa Burgi sublet her sister, Jennifer Pinkelman's, trailer home.

**DISPUTED.**

Teresa Burgi assumed the lease of her sister, Jennifer Pinkelman, of which *East Winds Court* had actual knowledge. (See, Exhibit "4"-Galvin Depo., page 21, lines 8-24). This was a month to month lease. (See, Exhibit "4"-Galvin Depo., page 22, lines 19-21, 24-25 and page 23, lines 1-2). Once Pinkelman moved out and Burgi moved in, it became a month to month lease which did not require a writing. I.D. (See, Exhibit "4"-Galvin Depo., page 22, lines 19-21, 24-25 and page 23, lines 1-2).

With regard to dogs, that lease provided that:

**PETS: TENANT assumes all responsibilities for pets. Dogs are only allowed on TENANT'S property. Dogs are not allowed to run free in East Winds Court. Barking of dogs, day or night is not allowed. Only harmless, non-vicious, safe, pets such as domestic dogs, housecats and indoor birds are allowed with East Winds Court, Inc. without the prior written permission of the LANDLORD. TENANTS are prohibited from keeping any other type or description of pet or animal or reptile. If a TENANT has a noisy pet such as a barking dog, the TENANT will have to purchase at the TENANTS own expense a muzzle and keep it on his/her dog at all times to prevent barking.**

15. Pinkelman's lease at her trailer park was executed in 1999 by Pinkelman and the former owner of the trailer court, D&M Developers.

**DISPUTED.**

This was a month to month lease with Pinkelman. Pinkelman moved out and Burgis moved in. A month to month lease does not require a new writing. (See, Exhibit "4"-Galvin Depo., page 22, lines 19-21, 24-25 and page 23, lines 1-2). However, *East Winds Court* and its tenants were well aware of the "No Dangerous Dog" policy of *East Winds Court*. (See, Exhibit "4"-Galvin Depo., page 10, lines 17-23).

16. The Burgis have never signed a lease agreement with *East Winds*. (Id. at 11.)

**DISPUTED.**

**Burgis had a month to month tenancy based upon the original lease that renewed every month. (See also, paragraph 15, above).**

17. The only lease that potentially creates rights in favor of the Burgis is the 1999 lease between Pinkelman and D&G Developers, of which the Burgis would be sub-lessor.

**DISPUTED.**

**The 1999 lease was a month to month lease. Burgis' tenancy simply continued the monthly lease, the tenancy became month to month (on the same terms) with Burgis, no further writing required. (See, Exhibit "4"-Galvin Depo., page 12, lines 16-25 and page 23, lines 1-2). Furthermore, the Pasman lease specifically excluded dangerous and vicious dogs from the trailer court. (See, paragraph 20 below).**

18. Pasman's lot at *East Winds* is four units away from the trailer home in which the Burgis reside.

**DISPUTED.**

**The basketball hoop was located on common property. (See, Exhibit "4"-Galvin Depo., page 19, lines 14-25 and page 20, lines 1 & 2).**

19. Pasman's address is 1204 Meadow View Road, Yankton, SD.

**NOT DISPUTED.**

**The basketball hoop was located on common property. (See, paragraph 18 above).**

20. As it relates to pets, Pasman's lease with *East Winds* provides:

**13. PETS: TENANT assumes all responsibility for pets. Dog are only allowed on TENANT's property. Dogs are not allowed to run free in *East Winds Court*, barking of**

dogs, day or not is not allowed. Only harmless, non-vicious, safe, pets such [as] domestic dogs, housecats and indoor birds are allowed within *East Winds Court, Inc.* without the prior written permission of the LANDLORD. TENANTS are prohibited from keeping any other type or description of per or animal or reptile.

**DISPUTED.**

*East Winds Court* and its agent and property manager, Ronald Galvin, were aware of the dangerous dog (which violates the Pasman lease) prior to the dog-bite, (See, Exhibit “4”-Galvin Deposition). See, also letter to tenants signed by Ron Galvin. See, Exhibit “11”-Open Letter dated 09/21/2017). (See, Exhibit “4”-Galvin Depo., page 11, lines 13-15). *East Winds* trailer court did not enforce its own lease agreement with Ron Pasman by having Pasman simply remove the vicious dog, keep it in a kennel or muzzle the dog. (Galvin Deposition page 10, lines 17-23). Galvin claims that he “doesn’t remember” seeing the “Beware of Dog” signs publicly posted right in front of Pasman’s property and if he had he would have seen the “Beware of Dog” signs we would have made Pasman remove Marco from the trailer court. (See, Exhibit “4”-Galvin Depo., page 14, lines 21-22). Furthermore, the Pasman Lease states on the first page:

“The breach, default, failure or violation of any one of the terms of this lease without limitation of its other rights, shall entitle LANDLORD to terminate this lease, re-enter and take over possession forthwith” (Galvin Deposition page 21, lines 4-7).

Blackburn testified that since K.R.B.’s mauling by Marco, *East Winds* has now decided to and is now actively enforcing its’ own leases. Since September 3, 2017 *East Winds* trailer park has made four (4) tenants remove their dogs, all pit bulls. (See, Exhibit “3”-Blackburn Depo., page 24, lines 7-15).

WHEREFORE, Plaintiffs submit their statement of Material Facts in Dispute. For all the above and forgoing reasons, Defendants Motion for *Summary Judgment* should be DENIED.

Dated this 1<sup>st</sup> day of May, 2020

KING LAW FIRM, P.C.



David J. King  
Kirk D. Rallis  
141 S. Main Ave., Suite 700  
Sioux Falls, SD 57104  
Telephone (605)332-4000  
[david@davidkinglawfirm.com](mailto:david@davidkinglawfirm.com)

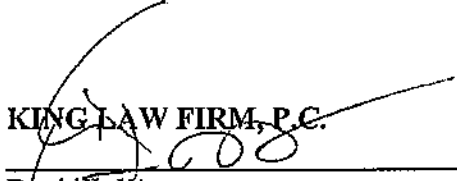
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the ***PLAINTIFF'S STATEMENT OF MATERIAL FACTS IN DISPUTE IN RESISTANCE TO DEFENDANT, EAST WINDS COURT, INC.'S, MOTION FOR SUMMARY JUDGMENT*** was sent via E-Mail to the following:

Evans, Haigh & Hinton, LLP  
Mark J. Arndt  
101 N. Main Ave., Suite 213  
P.O. Box 2790  
Sioux Falls, SD 57101-2790  
Email: [marndt@ehhlawyers.com](mailto:marndt@ehhlawyers.com)  
P. (605)275-9599  
F. (605)275-9602  
*Attorney for Defendant East Winds Court, Inc.*

Date this 1<sup>st</sup> day of May, 2020.

KING LAW FIRM, P.C.



David J. King  
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Return

YANKTON TITLE COMPANY

PO BOX 15

YANKTON, SD 57078

Prepared by:  
Blackburn & Stevens  
PO Box 753  
Yankton, SD 57078  
(605) 665-5550

STATE OF SOUTH DAKOTA } ss  
County of Yankton

FILED FOR RECORD AT 3:15 P.M.

JAN 03 2005

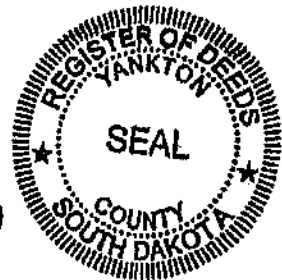
in Book 452 Page 595

Num ☒ Alpha  
Margin ☒ Tran  
Paid ☒ Seal

81232

*Synette R. Larson*  
Register of Deeds

\$ 10.00 pd.



### WARRANTY DEED

D & M Developers, Inc., a South Dakota Corporation Grantor, of Yankton, South Dakota, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, GRANTS, CONVEYS AND WARRANTS TO East Winds Court, Inc., % John P. Blackburn, Grantee of 100 West Fourth, PO Box 753, Yankton, SD, the following described real estate in the County of Yankton in the State of South Dakota:

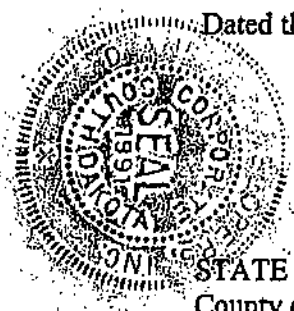
TRANSFER FEE  
PAID \$ 575.00  
DATE 1-23-05  
58715

Block One (1), Edna's Addition, as platted in Book S6, page 40B; AND Parcel "A" of the Southeast Quarter (SE ¼), Section Ten (10), Township Ninety-three (93), Range Fifty-five (55), as platted in Book S4, page 116A; all in Yankton County, South Dakota, less highways and roads.

This deed is subject to any and all covenants, conditions, restrictions and easements of record.

Grantor warrants that the above described property is not its homestead nor the homestead of any of its family members.

Dated this 1 day of January, 2005.



*Douglas T. Dykstra*  
Douglas T. Dykstra  
President of D & M Developers, Inc  
A South Dakota Corporation

STATE OF SOUTH DAKOTA,  
County of Yankton, ss:

On this the 1 day of January, 2005, before me, the undersigned officer, personally appeared Douglas T. Dykstra, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



*Mark A. Jensen*  
Notary Public  
My Commission Expires: 5-2-09



466000479

Open letter to all tenants of East Winds Court, Inc.  
September 21, 2017

The safety of all our tenants is a major concern. Since we have had the Court we have worked hard to make the Court a comfortable safe place to live.

In the last couple of months we have had some serious problems with dogs in the court. It is clearly stated in your lease (#13) that Pets are the responsibility of each owner. Dogs are not allowed to run free. Number 17 of the lease states that the tenants will occupy the premises quietly, peacefully and in a manner that will not cause annoyance to any neighbor.

So for now no Pitbull's, Rottweiler's or Dobermans will be allowed on the court. Neither as a tenants pet or as a visiting guest pet. This is in place 24 hours a day 7 days a week with no exceptions.

We are taking this very seriously. If there is a dog that is aggressive in any way, running lose and is a problem or danger to any other tenant, no matter what breed or size. It will have to be removed from the court or that tenant will have to move.

There is zero tolerance for this type of problem. Always kennel or leash and maintain control of your dog at all times.

If you have a question feel free to call me during regular business hours Monday through Fridays 8-5. After these hours leave a message on the office phone 665-4561 and I will return your call.

Ronald V Galvan, Sr.





- A. Okay. \_\_\_\_\_ start the recording, that's fine.
- Q. Alright.
- A. They don't type as fast as you talk.
- Q. I will try and slow it down a little bit then. Alright. This is Collin Godfrey at 14:10 on March 9<sup>th</sup>, 2018 interviewing Ron Galvan. Ron, could you please state your name and spell your last out for me?
- A. Uh-my name is Ron Galvan G-A-L-V-A-N. And it's just Ronald Victor Galvan is \_\_\_\_\_.
- Q. Alright. And what is a good mailing address for you?
- A. My mailing address and the home office for East Winds is 300 Pearl P-E-A-R-L Street in Yankton, South Dakota 57078.
- Q. Alright. And what is a good contact phone number for you?
- A. Uh-the one you just called on is my home office and that's 605-665-4561, and I also have a cell phone and that is 605-661-4366.
- Q. Alright. And in your own words, can you tell me what happened back on, let's see September 3<sup>rd</sup>, 2017?
- A. Well, I know nothing. Everything I got is second and third hand. I was not in the court at the time. I was not-I never saw the child. Um-by the time I heard about it and got out to the court, uh-he had already had the dog put down, and I never did see, I have did go to Teresa's house. Um-Teresa and I have history. She-she is not a bad lady. Let me explain that. She has had some hard luck and she gets kind of bitter and uh-that's why I didn't go, but there was nothing I could add, there was nothing, it wasn't my \_\_\_\_\_ I didn't see it, so I didn't do anything.
- Q. Okay. And just so we have the just of it. I believe her son's name is Kaleb?
- A. Uh-I can't \_\_\_\_\_ tell you. He is a very nice young man. I know that he's is a special ed child. Um-and he-I see him around the corner a lot of-he is on the go all the time, but he is not a mischievous child or anything like that as far as I could tell, you know, I don't know, but he does go on other's people property at times and \_\_\_\_\_ shooed him home.
- Q. Okay. I am writing this down here, so bear with me.
- A. That's fine.
- Q. Okay. Now um-were you aware that uh-the tenant, I believe his name is Ron Passman. Were you aware that he had a dog?
- A. That he had a dog?



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- Q. Yeah. Were you aware of him owning one prior to this incident?
- A. Oh, yeah. Ron has been in the court; Ron started his lease with us the first day of October 2010. They are both long time tenants.
- Q. Okay. And he's had the dog the whole time?
- A. No. I don't know. Awe, man. I would guess he had the dog three or four months and what he had said to me is it was a daughter a relative or something and he took it temporarily and that's all I know, uh-and that was-that just came up in conversation. He didn't strike me as the type of guy to go out and buy a dog because he lives by himself and he works, it's kind of hard to take care of a pet.
- Q. Okay. So he was watching the dog for a family member?
- A. What was that?
- Q. He was watching the dog for a family member? At least that's what he stated to you?
- A. I don't know if he was watching it or he took it because they couldn't take care of it. It was-it was just kind of a grey area. He just said it was so-and-so's dog. And I like I say my hearing is bad. He said it was so-and-so's dog and I just got it and so that was \_\_\_\_\_
- Q. Okay. Do you guys charge additional for people to have pets?
- A. Okay. Hold on a sec. Do we charge for additional people to have pets? No, we don't.
- Q. Okay. And um-let's see, you said he started leasing there October 2010.
- A. Yes, sir.
- Q. And uh-up until this point, had you known anything like for that dog to have vicious tendencies?
- A. No. Uh-we have, hold on a minute. We have had uh-no trouble-hold on a minute. Um-okay. Let me see what you said? No, with-with this dog, I didn't even know. It just seemed like a dog and it was always way back at the end of his lot, so I really never got to know the dog. He didn't even bark when I came up to the house, so I really \_\_\_\_\_ they don't have to-they are not required to tell me they have a pet unless it's on our property, and then um-you know, one of our homes, and then I just explain to them the rules and everybody knows you can't let your dog run loose and outside of your yard. Uh-just like you are not supposed to let your kids run loose. Well, you know, that's kind of a joke. \_\_\_\_\_ property to property and you know, like I said Theresa has a-she is good \_\_\_\_\_ kids and every one of them are special needs and um-the young man that does go out, he has pretty much got the run of the court and uh-I don't know how do you stop that you know, I just-but he never caused any grief as far as I know other than being.

- Q. Okay. Do you know about how old he is?
- A. If I was to guess, eight or nine, somewhere in that neighborhood. Maybe a little younger. You know, I have got tons of grand kids, but they all look the same to me. They do. I mean I have got 24 grand kids and five great grand kids and after a while I go to \_\_\_\_\_ every one of them looks the same.
- Q. Alright. Let's see. Now did Mr. Passman have insurance at all or do you know of that?
- A. Mr. who?
- Q. Passman, the owner of the dog?
- A. I have no idea. I don't know. He uh-I don't know if he has insurance or not. I really don't. Um-it's not a requirement. The ones in the court, we always suggest um-rental insurance, but um-on our houses we pay, you know, we have \_\_\_\_\_ or anything like that, and the people that have their own, they have to you know, decide how much they want or if they want, and I wouldn't have any way of knowing who has and doesn't have insurance.
- Q. Okay. Okay. And uh-about how far away does Theresa live from Ron?
- A. Hold up. Let me pull, I am going to pull up a map and I can tell you exactly \_\_\_\_\_ of the um-the court and I can tell you exactly how many mobile homes she lives away, okay?
- Q. Okay.
- A. I would say it's at least three or four. That's a guess. I know they are on the same side of the street. Okay. East Winds. Um-\_\_\_\_\_ numbers. Okay. Passman lives at 1204 and then there is \_\_\_\_\_ she is the third home down, she lives at 1300 Meadow View. Ron lives at 1204 Meadow View. So there is two mobile homes in between them.
- Q. Okay. And Ron, you said, kept his dog in the backyard?
- A. Well, okay. In the mobile home court. Um-the \_\_\_\_\_ rectangle. It's about 150 feet deep and it's \_\_\_\_\_ 7 5 or eighty feet wide. The-the mobile home itself runs down running the length of it, and then the rest of it is your yard, and he had a shed and there is a tree back there I think, and he kept the dog at the far end of the home and the property. Into the deep end of it, not close to the street, but I guess that's how you would say it.
- Q. And uh-I guess we would know nothing about training, weight, anything, any specifics about the dog?
- A. Yeah, I don't know that it was anything you know, it was just a pet. I don't know that there was any training. Like I said, at first I didn't even know he had one, like I said the

dog didn't bark when you come up to the house and um-and I never saw him walking the dog or anything and I ain't ever seen any of the tenants walk their dogs, you know, it's just. They were just there.

Q. Okay. Did you know anything about the breed of the dog prior to this?

A. No, I knew it was-it was a fairly good sized dog, but it wasn't huge. I am-I don't think it's as big as my lab, but I don't know. Somewhere in-like I said, it wasn't close enough to really know, I don't remember because like I said, it was in the back and I never went back to introduce myself to the dog. You know how that goes.

Q. Okay. Now, would you able to get me a copy of the lease agreement?

A. Absolutely-um-and John says he has your fax number. I can fax that to you and uh-I will do that, and I don't know if I will be in the main office today, but I will need to get that-I will get that to John. I don't know if he is working tomorrow or not, um-but I am off for the weekend, but at the latest I will get it to you Monday morning.

Q. Okay. That's fine. There is no-no rush on it.

A. Okay.

Q. After this uh-happened, did you see Kaleb? Did you see anything as far as his injuries? Were there any photos taken?

A. You know, no. It was the funniest thing, if-if somebody hadn't told me it happened, I wouldn't have known anything about it. Nothing. Nobody called me at home. Um-nobody left a message on my phone. Theresa never called me and left a message. I was surprised that she didn't. She is very excitable. Like I say, she-she has got a lot on her plate.

Q. Mm-hm.

A. And um-In fact, she lived on the other street and then moved to this side uh-and so like I said, she just \_\_\_\_\_ just um-like I was really surprised she didn't call me or she-her mom and dad used to live at the end of the street, and nobody called me. Nobody from the family. One of the neighbors said, well did you hear what happened? I go no, what happened? And then they told me and I said okay-and-and like I said, I think it was the next day or so, it was very short after that Ron had put the dog down. So I never even saw the dog again. Never saw it, never saw any evidence. Of course \_\_\_\_\_ if you didn't see the boy and you didn't see the dog, there is nothing to look at you know.

Q. Have you \_\_\_\_\_...

A. I can't even tell you for sure it happened. I believe it did and everybody and you're calling me about it, so it must have happened. I just never saw anything about it and nobody ever contacted me. To date nobody has except for you and then John \_\_\_\_\_ what have you heard, I told him and that was about it. I haven't even talked to Ron about the incident. Yesterday was the first day, the day before yesterday was the first day I

saw him when I was out moving snow so, and we didn't talk about it because you know, that wasn't what we were doing, we were moving snow and trying to help all the neighbors get cleared out a little bit, but like I said he has never mentioned it and I never asked.

- Q. Okay. Do you have his contact information?
- A. For Ron?
- Q. Mm-hm.
- A. Well, I have got his address, hold on, I may have his phone number. Um-let's see Ron-the number I have is 605-655-4002.
- Q. 4002. Okay. And his mailing address is the 1204...
- A. Meadow View Road. M-E-A-D-O-W-V-I-E-W, one word, and then Road, and that's in Yankton, South Dakota.
- Q. Okay. I got that here, and then I will get the Lease Agreement here from you.
- A. Yup.
- Q. I will ask when I reach back out to the attorney for the Burgi's, I believe, um-I will see if they have any photos of Kaleb Burgi's injuries. Um-have you seen Kaleb since?
- A. No. I haven't seen Theresa or the kids out, and the weather has been so nasty and I \_\_\_\_\_ and I don't live in the court.
- Q. Okay.
- A. So I wouldn't have seen them. I don't see 90 percent of the tenants.
- Q. Okay. Well, I believe at this time, that's everything I have for you. Is there anything else that you would like to add to this statement?
- A. Um-well, like I said, if I would have seen the dog, anybody was aggressive and stuff like that or a barker, and we have moved people because of their dogs barking because people aren't going to choose a pet over family, you know, you don't, you know how they are, some of them believe they are part of the family, and I have told people, you have either got to keep the dog quiet or you have got to move, so anyway that's what's going on there. Okay. Hold on one second. I will be right with you. I am on the other line. Hold on. Um-so that's all I have for you. If there's anything else you need feel free to call me.
- Q. Okay. Let me just do the closing remarks here and I will let you take that call.
- A. Okay.
- Q. Um-everything that you have told me is true and to the best of your knowledge?

- A. Yes, sir.
- Q. And you understand that this was recorded?
- A. Yes \_\_\_\_\_.
- Q. And it was done so \_\_\_\_\_?
- A. \_\_\_\_\_ and \_\_\_\_\_ that's as far as it went, is that it?
- Q. That was the question.
- A. Yes, sir. You told me about it. I was aware of it.
- Q. Alright. Well, thank you so much for your time here today. I hope you have a great day and a great rest of your weekend.
- A. You too. Thank you, sir.
- Q. Bye.
- A. And this is Collin Godfrey now concluding this interview.

END OF CONVERSATION.

Transcribed by Casi Heeren on 3/12/18.



STATE OF SOUTH DAKOTA )  
 : SS  
COUNTY OF YANKTON )

IN CIRCUIT COURT

FIRST JUDICIAL CIRCUIT

TERESA BURGI, INDIVIDUALLY, AND  
TERESA BURGI, AS GUARDIAN AD  
LITEM FOR KALEB RAYMOND BURGI,

Plaintiffs,

vs.

EAST WINDS COURT, INC.,

Defendant & Third-Party

Plaintiff,

vs.

RONALD PASMAN,

Third-Party

Defendant.

CIV. 19-000261

**PLAINTIFF'S SUPPLEMENTAL  
STATEMENT OF MATERIAL FACTS IN  
DISPUTE**

**COMES NOW**, the Plaintiff, Teresa Burgi, Individually, and Teresa Burgi, as Guardian Ad Litem for Kaleb Raymond Burgi, and for *Supplemental Statement of Material Facts in Dispute* does hereby state as follows:

**I. MARCO IS AND WAS A VERY DANGEROUS DOG**

1. Pasman has had his pit-bull Marco for four years at *East Winds Court, Inc.* (Pasman Depo P. 9 Line 25).
2. Pasman had the dog principally for protection (Pasman Depo 26 Line 5).
3. Pasman describes Marco as a head strong, big bodied dog with aggressive tendencies (Pasman Depo P. 42 Line 22, P. 43 Line 9, P. 77 Line 19, P. 87 Line 16-21, P. 88 Line 3-4).



4. Because Pasman knew Marco was dangerous, Pasman had put two (2) "Beware of dog" signs up for four (4) years. Ever since he first got Marco (Pasman Depo P. 29 Line 24, 25, 30 Line 1-5).
5. Janice Anderson is Pasman's neighbor. She is afraid of Marco (Anderson Affidavit P.1 ¶ 4)
6. Anderson *knew* Marco was aggressive. (Anderson Affidavit P.1 ¶ 5)
7. **Marco would attack if anyone was within reach.** (Anderson Affidavit P.2 ¶ 14)
8. Marco was so aggressive that he would try to attack Anderson lawn mower while she mowed the lawn. (Anderson Affidavit P.1 ¶ 8)
9. Marco was dog "you shouldn't walk up to". (Anderson Affidavit P.1 ¶ 9)
10. Pasman put of the "Beware of Dog" signs after he got the dog. (Anderson Affidavit P.2 ¶ 10)
11. Marco would bark everyone who passed by. (Anderson Affidavit P.2 ¶ 13)

## II. **EAST WINDS KNEW OF MARCO WAS DANGEROUS.**

1. "The whole neighborhood knew I had a dog" (Pasman Depo P. 29 Line 20).
2. "His (Pasman) dog is always out front of his leased trailer" (Pasman Depo 30 Line 11-13).
3. Pasman testified that you would "have to be blind not to see the "Beware of Dog" signs on the front of his trailer" (Pasman Depo 39 Line 15).
4. Pasman testified that Galvin knew about the dog (Pasman Depo P. 60 Line 11-12).

- 5.
6. "Yeah, even he (Ron Galvin) came over to the dog and played with the dog"  
(Pasman Depo P. 29 Line 20).
7. East Winds Court, Inc. was aware of Marco and knew that Marco was dangerous. (Anderson Affidavit P.2 ¶ 16)
8. Marco is one of those dogs that shouldn't be there. (Anderson Affidavit P.2 ¶ 15)
9. Pasman testified that Galvin knew about the "Beware of Dog" signs. (Pasman Depo P. 60 Line 15-17)
10. Pasman testified that Galvin drove through the trailer "quite a bit", "he was always running through there (trailer park)" (Pasman Depo P. 72 Line 11).
11. Pasman testified that he never kept Marco in backyard (Pasman Depo P. 71 Line 24-25, Page 72 Line 1-3.)
12. Pasman testified that Galvin "would have had to be blind" to miss Marco and the "Beware of the Dog" signs in the front of his property (Pasman Depo P. 74 Line 14-16).
13. Pasman testified that "There was no doghouse. There was no kennel...didn't need one" (Pasman Depo P. 30 Line 17-20).
14. Pasman testified as to the vicious nature of Marco when he admitted that he would have threatened Defendant insurance's carrier adjuster:
  - Q. "Do you remember anybody (from the insurance carrier) coming to your house and talking with you about it (Marco dog bite)?"
  - A. ***"Heck, no. Hell, no. They're lucky I didn't have the dog then. They wouldn't be coming on my property"*** (Pasman Depo P 33

Line 8-13).

15. *East Winds Court, Inc.*'s Responses To *Request For Admissions (First Set)* on June 16, 2020:

**Response to Admission 7.**

Admit or Deny that Ronald Pasman is a tenant of *East Winds Court, Inc.*

**RESPONSE: Admit.**

**Response to Admission 8.**

Admit or Deny that at the time Ronald Pasman signed his lease agreement with *East Winds Court, Inc.* in 2010 he was not advised of the requirement to have renter's insurance if he were to own and/or possess a dog on the premises of *East Winds Court, Inc.*

**RESPONSE: Admit.**

**Response to Admission 18.**

Admit that in the five (5) years prior to September 3, 2017, you were aware that Ronald Pasman owned a dog named "Marco".

**RESPONSE: Admit that East Winds management was aware that Ron Pasman owned a dog named Marco prior to September 3, 2017.**

**Response to Admission 20.**

Admit or Deny that East Winds Court, Inc. knew Ronald Pasman's dog was vicious, you would have required him to have the dog removed.

**RESPONSE: East Winds objects to this Request as it is grammatically incorrect. Without waiving said objection, East Winds denies that it had knowledge that Ron Pasman's dog was vicious prior to September 3, 2017. Per Pasman's lease agreement with East Winds, the only pet permitted to be maintained by Pasman was a non-vicious and safe pet.**

**Response to Admission 24.**

Admit or Deny that you or agents of yours, including Ronald Galvin, regularly inspected *East Winds Court, Inc.* for potential dangerous conditions, including dogs, at East Winds Court, Inc.

**RESPONSE: Admit that Ronald Galvin was on the site of East Winds Trailer Court on a somewhat regular basis, and would have observed, reported, and/or attempted to correct a known "dangerous conditions". Deny that Ronald Galvin had knowledge that Marco was "dangerous" prior to the September 3, 2017, incident that is the subject of this lawsuit.**

**Response to Admission 28.**

Admit or Deny that Ronald Galvin personally would inspect *East Winds Court, Inc.* for potentially dangerous dogs.

**RESPONSE:** Admit that Ronald Galvin was on the site of *East Winds Trailer Court* on a somewhat regular basis, and would have observed, reported, and/or attempted to correct a known "dangerous conditions", including if he observed a dangerous dog. Deny that Ronald Galvin had knowledge that Marco was "dangerous" prior to the September 3, 2017, incident that is the subject of this lawsuit.

**Response to Admission 29.**

Admit or Deny that Ronald Galvin was an employee of yours on September 3, 2017.

**RESPONSE:** Admit.

**Response to Admission 30.**

Admit or Deny that one of Ronald Galvin's duties was to inspect *East Wind's Court, Inc.* for potentially dangerous conditions.

**RESPONSE:** East Winds objects to the form of this Request as it calls for a legal conclusion. The parties' respective legal duties are a question of law for the Court. Without waiving said objection, admit that Ronald Galvin was on the site of *East Winds Trailer Court* on a somewhat regular basis, and would have observed, reported, and/or attempted to correct any known "dangerous conditions".

**Response to Admission 31.**

Admit or Deny that one of Ronald Galvin's duties was to inspect *East Winds Court, Inc.* for potentially dangerous dogs.

**RESPONSE:** East Winds objects to the form of this Request as it calls for a legal conclusion. The parties' respective legal duties are a question of law for the Court. Without waiving said objection, admit that Ronald Galvin was on the site of *East Winds Trailer Court* on a somewhat regular basis, and would have observed, reported, and/or attempted to correct any known "dangerous conditions".

**Response to Admission 36.**

Admit or Deny that Ronald Pasman's trailer is visible from the street.

**RESPONSE:** East Winds objects to this Request on the grounds that it is vague, ambiguous, and impossible to answer, as it does not identify the "street" that is the subject of the Request.

16. *East Winds Court, Inc.*'s Responses to *Request For Admissions (Second Set)* on August 17, 2020:

**Response to Admission 1.**

Admit or Deny that Meadow View Road is located in East Winds Court.  
**RESPONSE: Admit.**

**Response to Admission 2.**

Admit or Deny that Meadow View Road is a private street located in East Winds Court.

**RESPONSE: Admit.**

**Response to Admission 3.**

Admit or Deny that Meadow View Road was exclusively under the ownership, maintenance, dominion, and control of East Winds Court, Inc. at the time of the occurrence.

**RESPONSE: Admit.**

**Response to Admission 4.**

Admit or Deny that John Blackburn knew Pasman's dog was dangerous.

**RESPONSE: Deny.**

**Response to Admission 5.**

Admit or Deny that John Blackburn would have had Pasman remove the dog had he known Pasman's dog was vicious.

**RESPONSE: East Winds objects to this Request as it assumes facts that are not in evidence. John Blackburn and/or East Winds had no prior knowledge that Pasman's dog was vicious. Without waiving said objection, admit.**

**Response to Admission 7.**

Admit or Deny that one of Ronald Galvin's job duties was to inspect East Winds Court for potentially dangerous dogs.

**RESPONSE: Admit that Ronald Galvin was on the site of East Winds Trailer Court on a somewhat regular basis, and would have observed , reported, and/or attempted to correct any known "dangerous conditions".**

**Response to Admission 8.**

Admit or Deny that in your deposition, page 19 line 5-6, you admit that you would have "taken action" if you would have seen the "Beware of Dog" signs on Pasman's trailer.

**RESPONSE: East Winds objects to the form of this Request as it does not identify the individual referenced as "you". Assuming this Request is referencing the testimony of Mr. Blackburn, Mr. Blackburn's testimony speaks for itself. Without waiving said objection, deny.**

**Response to Admission 9.**

Admit or Deny that in your deposition, page 19 line 8-11, you admit that had you known there were "Beware of Dog" signs on Pasman's trailer, you would have "investigated" whether Pasman's dog was potentially dangerous.

**RESPONSE:** East Winds objects to the form of this Request as it does not identify the individual referenced as "you". Assuming this Request is referencing the testimony of Mr. Blackburn, Mr. Blackburn's testimony speaks for itself. Without waiving said objection, deny.

III. **EAST WINDS WAS NEGLIGENT IN ALLOWING THE PLACEMENT OF THE BASKETBALL HOOP ON COMMON PROPERTY DIRECTLY NEXT TO MARCO.**

1. *East Winds Court, Inc.* allowed a basketball hoop and basketball games on its' private (common property) street right in front of Pasman's house, within mere feet of Marco. (Eagleman Depo P. 11 lines 15-25, P. 12, lines 1-14).
2. *East Winds Court, Inc.*'s Responses to *Request For Admissions (Second Set)* on August 17, 2020:

**Response to Admission 8.**

Admit or Deny that in your deposition, page 19 line 5-6, you admit that you would have "taken action" if you would have seen the "Beware of Dog" signs on Pasman's trailer.

**RESPONSE:** East Winds objects to the form of this Request as it does not identify the individual referenced as "you". Assuming this Request is referencing the testimony of Mr. Blackburn, Mr. Blackburn's testimony speaks for itself. Without waiving said objection, deny.

**Response to Admission 9.**

Admit or Deny that in your deposition, page 19 line 8-11, you admit that had you known there were "Beware of Dog" signs on Pasman's trailer, you would have "investigated" whether Pasman's dog was potentially dangerous.

**RESPONSE:** East Winds objects to the form of this Request as it does not identify the individual referenced as "you". Assuming this Request is referencing the testimony of Mr. Blackburn, Mr. Blackburn's testimony speaks for itself. Without waiving said

objection, deny.

**Response to Admission 11.**

Admit or Deny that Ronald Pasman's trailer is visible from Meadow View Road.

**RESPONSE:** Admit.

**Response to Admission 10.**

Admit or Deny that the "Beware Of Dog" signs are visible from Meadow View Road.

**RESPONSE:** East Winds objects to the form of the Request as it is vague and ambiguous. The Request does not identify the individual to whom the sign may be visible. Without waiving this objection, East Winds admits that the sign may be visible to some people from Meadow View Road, including Plaintiffs, who lives across the street. The visibility of the sign may depend upon the quality of the person's eyesight and/or person's vantage point from the Road, as well as the time of day the person is attempting to view the sign.

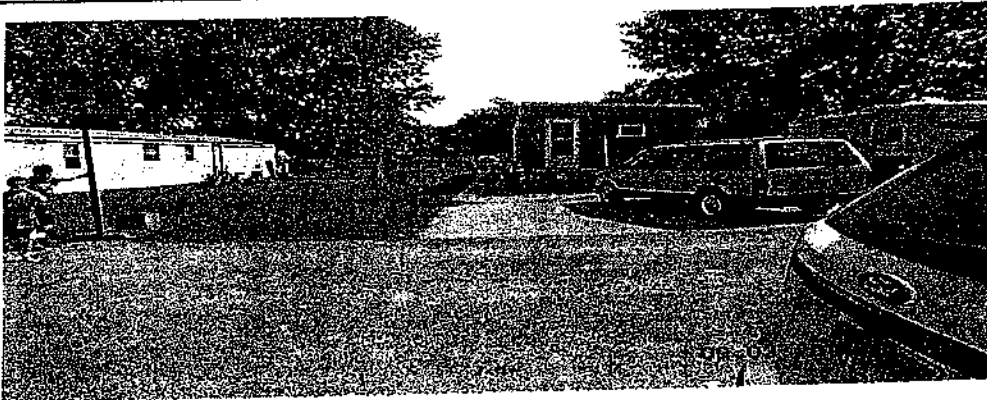
**Response to Admission 11.**

Admit or Deny that the basketball hoop as depicted in the picture below is located on Meadow View Road.

**Office of the Yankton County Sheriff**

201701811SO-004 - Digital Photo -  
DSCN6158

Printed on February 12, 2020



**RESPONSE:** Deny. The basketball hoop in the photograph appears to be located in the grass lot of a trailer court near Meadow View Road.

3. Pasman testified that when Marco was not in the house, he was chained out front to the hitch. (Pasman Depo 30 Line 11-13).

4. No one ever told the boys not to play basketball in the street. (Eagleman Deposition at page 13, line 24 to page 14 line 1).
5. The basketball hoop was located right outside Pasman's home on a private street solely owned and maintained by *East Winds Court, Inc* in a common area directly next to where his dog was chained up to the hitch in front of Pasman's trailer. (Pasman Depo P. 48 Line 20-21).
6. This was in the exact same spot on the road where the young boys had played basketball many times before. (Eagleman Depo P. 34, lines 17-25, P. 35 lines 1-6).
7. That is where the boys were all playing basketball (on the private street) with K.B. when K.B. went to retrieve a basketball that bounced mere feet from the Pasman trailer and K.B. was ran down from behind and viciously attacked by Marco. (Eagleman Depo P. 18 Line 13-23).
8. According to Eagleman the basketball bounced near Marco. K.B. went to get the basketball. Marco then attacked K.B. (Eagleman Depo. P. 18 Line 13-25, P. 19 Line 2).
9. Marco wasn't hit by a stray bounce of a basketball. (Eagleman Depo 19 Line 6-7).

**WEREFORE**, as genuine issues of Material Fact abundantly exist in this case,

Summary Judgement is inappropriate in this case.

Dated at Sioux Falls, South Dakota, this 15 day of September, 2020.

**KING LAW FIRM, PC**





1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT  
2 ) ss  
COUNTY OF YANKTON) FIRST JUDICIAL CIRCUIT

3 \*\*\*\*\*

4 TERESA BURGI, INDIVIDUALLY,  
5 AND TERESA BURGI, AS GUARDIAN  
AD LITEM FOR KALEB RAYMOND  
6 BURGI,

7 Plaintiffs, 66CIV19-000261

8 -vs- MOTION HEARING

9 EAST WINDS COURT, INC.,

10 Defendant & Third-Party Plaintiff,

11 -vs-

12 RONALD PASMAN,

13 Third-Party Defendant.

14 \*\*\*\*\*

15 DATE & TIME: September 22, 2020 at 11:30 a.m.

16 BEFORE: THE HONORABLE DAVID D. KNOFF  
CIRCUIT COURT JUDGE  
17 Yankton County Courthouse  
Yankton, South Dakota 57078

18 LOCATION: Yankton County Circuit Courtroom  
Yankton County Courthouse  
19 Yankton, South Dakota 57078

20 APPEARANCES: For the Plaintiffs:  
21 Mr. David J. King  
Attorney at Law  
22 141 N. Main Ave., Ste. 700  
Sioux Falls, SD 57104

23 For the Defendant:  
24 Mr. Mark J. Arndt (by phone)  
Attorney at Law  
25 P. O. Box 2790  
Sioux Falls, SD 57101-2790

1 THE COURT: Hello. Is Mr. Arndt on the phone?

2 MR. ARNDT: I am, Your Honor.

3 THE COURT: All right. And I don't know if  
4 Mr. Blackburn is on the phone also. He's not in the  
5 courtroom.

6 MR. BLACKBURN: I am on the phone.

7 THE COURT: All right. And Mr. King is in the  
8 courtroom.

9 So the next matter before the Court is Yankton  
10 County civil file 19-261. This is on a motion for  
11 summary judgment brought by East Winds Court, Inc., the  
12 defendant. Teresa Burgi and Kaleb Raymond Burgi are the  
13 plaintiffs. They are represented in court by Mr. King.  
14 And then Mr. Arndt is appearing on behalf of East Winds  
15 Court. John Blackburn is a representative of East Winds  
16 Court, Incorporated.

17 So this previously was argued between -- or by  
18 the parties. The Court gave the plaintiff additional  
19 time to complete discovery. That's been done and the  
20 parties have submitted briefs. Plaintiff has also  
21 submitted some supplemental exhibits to the affidavit of  
22 Kirk Rallis. There was also an additional undisputed  
23 statement of material facts supplement that was provided  
24 by the plaintiff.

25 And so I'll hear arguments from the parties.

1 This is the defendant's motion. You can proceed. The  
2 one thing the Court wants to address or have the parties  
3 really put their emphasis is on what the knowledge is of  
4 East Winds Court. And the Court has gone through and  
5 seen the statements of Mr. Pasman, seen the affidavit of  
6 the neighbor and what she believes happened. And the  
7 Court really doesn't need any arguments regarding that.  
8 I really want to focus completely on the knowledge and  
9 what was known or should have been known by East Winds  
10 Court.

11 So I'll start with you, Mr. Arndt.

12 MR. ARNDT: Thank you, Your Honor. Yes. I  
13 think that it should be relatively simple from East  
14 Winds' perspective. There is no evidence to indicate  
15 that East Winds had any knowledge of Marco, this dog  
16 owned by Mr. Pasman, their tenant, being dangerous or  
17 biting another individual or even another animal. I  
18 think any of the people who have spent any significant  
19 time with the dog all testified consistently, now that  
20 they've all been deposed by the plaintiff, that there was  
21 never a prior incident of Marco biting or attacking any  
22 other person or dog. And, of course, if none of them  
23 would have had any such knowledge, of course, East Winds  
24 would have no such knowledge.

25 So, you know, it's a two-step analysis in our

1 view. Number one, the plaintiff would have to establish  
2 that there was a prior incident; and number two, that  
3 East Winds had knowledge of that prior incident  
4 sufficient that they would have a legal duty to protect  
5 their additional tenant Kaleb Burgi. And that knowledge  
6 simply doesn't exist.

7 I would, I guess, reference for the Court --  
8 perhaps I should have done this in our most recent  
9 responsive brief, but I do believe, as we argued in our  
10 initial brief on this issue, that the Court should rule  
11 on this summary judgment motion based upon the lack of a  
12 legal duty that East Winds would owe to the Burgis based  
13 upon the facts of this. And although many of the torts  
14 are subject to summary judgment motions, I think  
15 precedent is clear that if the Court determines there's a  
16 lack of legal duty, which is a question for the Court, a  
17 question of law for the Court, then summary judgment is  
18 appropriate. The plaintiffs simply haven't provided any  
19 information, particularly any specific information to  
20 indicate that this dog previously had an incident that  
21 would put anyone on notice of him being dangerous let  
22 alone that knowledge being attributed to East Winds.

23 I'd also again note that I think we're  
24 fortunate in these circumstances to have a very recent  
25 ruling by the South Dakota Supreme Court that's directly

1 on point on this issue and that's the Ridley decision  
2 from 2020. And the facts and circumstances are quite  
3 similar, that the lack of knowledge of the person that's  
4 being sued any dangerous propensities of the dog is  
5 sufficient for the Court to grant summary judgment, so we  
6 would request that today.

7 THE COURT: Mr. King?

8 MR. KING: Thank you, Your Honor.

9 THE COURT: Will you pull the microphone closer  
10 to you?

11 MR. KING: I apologize, Your Honor. I would  
12 say a couple things. You know, I reviewed the transcript  
13 of the last hearing. And the Court had raised, you know,  
14 really two issues: You know, was Marco a dangerous dog,  
15 and did East Winds know that. And --

16 THE COURT: Do you want to -- if you're okay,  
17 you're comfortable to take that off so we can hear you  
18 better.

19 MR. KING: Thank you, Your Honor. And we've  
20 taken the deposition of Mr. Pasman. And when you look at  
21 Rowland and you look for -- look at Gehrts, you're  
22 supposed to -- when it comes to looking at the duty and  
23 the foreseeability question, you're supposed to look at  
24 all the facts and circumstances to determine  
25 foreseeability. South Dakota is not, you know, a

1 first-bite jurisdiction. There is evidence that Marco  
2 was in a fight before this. There is all the evidence  
3 from Mr. Pasman as to Marco's being dangerous. You know,  
4 you're supposed to look at the facts and the  
5 circumstances. You know, the reason, the purpose for the  
6 dog, the dog was there for protection.

7 We took the deposition of the insurance  
8 adjuster. I asked Mr. Pasman about that. Mr. Pasman  
9 said, you know, no, he wouldn't have come on my property  
10 because he would have had to go through my dog.

11 THE COURT: And when I started I really want to  
12 focus on arguing what was known --

13 MR. KING: Yep.

14 THE COURT: -- by East Winds Court.

15 MR. KING: Yep.

16 THE COURT: Clearly Mr. Pasman, there would be  
17 questions of fact on his liability if he was moving for a  
18 motion for summary judgment.

19 MR. KING: Okay.

20 THE COURT: So I just really want to focus on  
21 what was known by East Winds.

22 MR. KING: Sure.

23 THE COURT: My understanding from the record is  
24 there's an argument they should have seen a beware of dog  
25 sign or beware of dog signs.

1 MR. KING: Yes, Your Honor.

2 THE COURT: And they should have seen a dog in  
3 the yard.

4 MR. KING: Yes, Your Honor.

5 THE COURT: What other evidence, what other  
6 uncontested facts are there of knowledge by East Winds  
7 Trailer Court or that they should have had knowledge?

8 MR. KING: Sure. Well, Mr. Galvin had  
9 knowledge. Mr. Galvin says he has knowledge. Mr. Galvin  
10 said he went out and investigated the situation.  
11 Mr. Galvin testified that, you know, they had had the dog  
12 for two months. And that was kind of the parting line  
13 when this motion for summary judgment was first filed.  
14 You know, it turned out Pasman had the dog for five  
15 years. Mr. Galvin said he drove by right in front of  
16 that -- that house multiple times every day and usually  
17 more than once. And if you look at it, that's fourteen  
18 hundred separate times he drove by the beware of dog  
19 signs and allegedly fourteen hundred some times that he  
20 missed the beware of the dog signs. He says he went up  
21 and interviewed or asked Pasman about it. Pasman said  
22 the dog was fine according to Galvin.

23 You know, Janice Anderson, the next door  
24 neighbor, talks about how aggressive this dog really was.  
25 You know, this dog was not walked. This dog was not



1 kenneled.

2 THE COURT: Okay. So again those are all facts  
3 about the dog. I really want to focus on what East Winds  
4 Court, Incorporated, or their agents knew or should have  
5 known because those sorts of facts the Court has no --  
6 nothing in the record that says they should have known  
7 the dog wasn't walked. They should have known. I really  
8 want to focus on the knowledge of East Winds because I  
9 too look at Ridley versus Sioux Empire Pit Bull Rescue  
10 and to me that sets out a standard for an owner, let  
11 alone a landlord of an owner. And a lot of the evidence  
12 that is presented to the Court has to do with people  
13 other than East Winds Court. So you have fourteen  
14 hundred times presumably they drove by the signs. What  
15 else?

16 MR. KING: Okay. Well, again the neighbor  
17 thought the dog was dangerous. Pasman thought the dog  
18 was dangerous. Galvin knew or should have known that the  
19 dog was dangerous.

20 THE COURT: Okay. How did Galvin know the dog  
21 was dangerous? Let's start there.

22 MR. KING: Because when he walked up to the  
23 trailer the two beware of the dog signs were up. And  
24 they'd been up for, you know, according to all the  
25 evidence, five years.

1 THE COURT: All right.

2 MR. KING: Now --

3 THE COURT: So just wait. And the reason I'm  
4 stopping you, I'm not trying to be argumentative at all.  
5 I just want to write this down because I am going to go  
6 through and make sure that I understand every argument.  
7 So he knew the dog was dangerous based on there were two  
8 signs.

9 MR. KING: Yep, beware of the dog signs that  
10 had been up for four to five years.

11 THE COURT: All right. So he should have seen  
12 those signs.

13 MR. KING: He should have seen those signs. We  
14 think he did see those signs.

15 THE COURT: Okay. So thinking and he did, is  
16 there anything in the record where he admitted that he  
17 saw the signs?

18 MR. KING: No.

19 THE COURT: Okay. And that's -- because the  
20 Court is limited to the record in front of it.

21 MR. KING: Yep.

22 THE COURT: So he should have seen those.

23 MR. KING: Definitely.

24 THE COURT: Any other record evidence --

25 MR. KING: Sure.

1 THE COURT: -- that he knew, he had specific  
2 knowledge that the dog was dangerous?

3 MR. KING: Sure. Mr. Blackburn testified that  
4 he drove out there and was out there about every other  
5 month driving by.

6 THE COURT: Okay.

7 MR. KING: He says that had he seen the beware  
8 of the dog signs he would have investigated and that dog  
9 would have gone. He would have and should have and he  
10 admits that in his deposition.

11 THE COURT: All right.

12 MR. KING: And Mr. Galvin drove by every day.  
13 And when you compare that to the Boe case, Boe v. Healy,  
14 168 N.W.2d 710, a 1969 case. You know, the statement he  
15 may be liable when the defect existed for such a period  
16 of time as to justify the conclusion that in the exercise  
17 of ordinary care he should have known of its existence  
18 within such time as would have given him a reasonable  
19 opportunity to remedy the condition or where the exercise  
20 of reasonable care he would have discovered the defective  
21 condition and made it safe. Constructive notice is  
22 implied from long continued existence of the defect.

23 Well, Mr. Galvin is -- you know, he's out there  
24 every day multiple times. And he says when we take his  
25 deposition -- and keep in mind, Your Honor, his

1 statements are equivocal. You know, and in my opinion  
2 Mr. Blackburn's statements are equivocal as well. No, I  
3 don't -- I didn't see it. You know, he just had the dog  
4 for two or three months. You know, totally unsupported  
5 by the facts.

6 And in the Boe case they cite, you know, 180  
7 days was enough time. Here we have five years, five  
8 years to look the other way. And we can't put the  
9 plaintiff in the position where the plaintiff has to  
10 prove -- they get to defend their case by saying  
11 subjectively today, you know, I don't remember it. You  
12 know, Mr. Blackburn testified I don't have that present  
13 recollection.

14 THE COURT: But the plaintiff does have the  
15 burden of proof in this case, doesn't --

16 MR. KING: No question.

17 THE COURT: And the plaintiff has to show that  
18 East Winds had either specific knowledge of the dangerous  
19 propensities of the dog. And it sounds like there is  
20 actually no evidence to that.

21 MR. KING: Well, I think there is, but they  
22 haven't admitted it. If you're forcing us to say have  
23 they admitted it, no, they have not admitted it.

24 THE COURT: Okay. But I guess I'm not sure how  
25 to -- if they don't have knowledge and you've taken their

1 depositions, what else would there be? I mean, they've  
2 said they didn't know this dog was dangerous, so that  
3 would never -- there would never be an instance where a  
4 Court could grant summary judgment because you can just  
5 say, well, we disagree. We think they thought something  
6 differently. I mean, what evidence is there to say that  
7 they had any specific knowledge of the dangerous  
8 propensity of the dog?

9 I saw the testimony of -- or the deposition  
10 testimony of -- or the request for admissions of  
11 Mr. Blackburn. Had they known the dog was dangerous,  
12 they would remove it from the court. I see all that. I  
13 recognize that. So there's no specific evidence, no  
14 evidence that they had any specific knowledge that the  
15 dog was dangerous. So really what it comes down to is  
16 then they should have known based on the fact there were  
17 these signs and that the dog was in the front yard.

18 MR. KING: Yes.

19 THE COURT: Okay.

20 MR. KING: And not just that. What about  
21 Mrs. Anderson's affidavit? She says that East Winds knew  
22 about it directly.

23 THE COURT: She says she believes that they  
24 knew about it.

25 MR. KING: Yes.

1 THE COURT: That's -- she gives no facts of how  
2 she can make that statement, correct?

3 MR. KING: I don't know that I agree with that.  
4 She talks about how aggressive the dog is, that he barked  
5 at everything, that he would try to attack at everybody  
6 who came by.

7 THE COURT: Okay. So she saw that. What did  
8 she say that Mr. Blackburn or any other representative of  
9 East Winds, Mr. Galvin, what did she say that they saw?

10 MR. KING: She says in her affidavit that she  
11 believes East Winds knew about it.

12 THE COURT: But she gave no evidence in her  
13 affidavit. That's merely a belief that she has. What is  
14 her evidence that they believed it?

15 MR. KING: You know, the -- the plaintiff has  
16 the initial burden of proof. On summary judgment the  
17 burden of proof is on the defense, not on the plaintiff.  
18 And the evidence clearly shows respectfully that East  
19 Winds should have known about this.

20 THE COURT: Okay. And so it's a should have  
21 known.

22 MR. KING: Should have --

23 THE COURT: Again I'm just going to the  
24 specific evidence that you -- you talked about  
25 Miss Anderson's deposition. Her deposition --

1 MR. KING: Affidavit --

2 THE COURT: All right. Excuse me, her  
3 affidavit. Her affidavit gives no statement of what was  
4 known by East Winds, correct? Tell me if I'm reading  
5 that incorrectly.

6 MR. KING: Well, I think she says in her  
7 affidavit that East Winds knew -- she believes East Winds  
8 knew all about it.

9 THE COURT: Okay. And she believes doesn't  
10 rise to the level of actual uncontested material facts,  
11 though. So --

12 MR. KING: Well, you know, Your Honor, the  
13 Gehrts and the Rowland case say that you have to examine  
14 all of the surrounding facts. And if the plaintiff is  
15 put into a position where we can only win our case if the  
16 defense admits they knew about it, well, that's an  
17 impossible -- you know, every defendant would come in and  
18 say I didn't know. You know, you have to look at all  
19 the surround -- just like Rowland says.

20 If you look at the bar owner in Rowland, you  
21 know, a guy brings in a three-foot tall Akita into a bar.  
22 Another patron in the bar is petting the dog or whatever  
23 and gets bit. The Court says, hey, it's foreseeable.  
24 You bring in a big dangerous -- you know, potentially  
25 dangerous dog into this bar with drunken patrons. It's

1 foreseeable that the dog is going to bite somebody.

2           You know, how -- in this case it is way beyond  
3 foreseeable that Marco is going to bite somebody. Duty  
4 arises because of foreseeable injury. When you take --  
5 when you take the totality of the situation, the dog's  
6 been there for five years. The dog lives its life on a  
7 chain in the front. Its purpose, just like Rowland, just  
8 like Gehrts say, is for protection. It is a -- it is --

9           THE COURT: Okay. And let me stop you for a  
10 second. All right. So we are -- now we've narrowed it  
11 down that this is a foreseeability case. There was no  
12 actual knowledge that in the record that East Winds knew  
13 this dog was dangerous, but it was foreseeable, correct?

14           MR. KING: I agree that it was foreseeable and  
15 I don't concede that East Winds didn't know. I believe  
16 East Winds knew. I believe they --

17           THE COURT: Okay.

18           MR. KING: -- knew or should have known.

19           THE COURT: Then show me. Point me in the  
20 record where there was actual knowledge.

21           MR. KING: Well, Galvin goes out to talk to  
22 Pasman about the dog and he walks right past two beware  
23 of the dog signs.

24           THE COURT: Okay. So what you're saying is  
25 that when there is a beware of dog sign, that in and of



1     itself creates a fact of knowledge that a dog is going to  
2     bite someone?

3             MR. KING:  Yep.  And I also say --

4             THE COURT:  All right.  Just wait.  I just want  
5     to write that down because I want to make sure I  
6     understand your argument --

7             MR. KING:  Yep.

8             THE COURT:  -- completely.

9             MR. KING:  And I'd like to say more.

10            THE COURT:  Just wait.  I'll allow you.  I just  
11    want to write this down.

12            MR. KING:  Sure.

13            THE COURT:  All right.

14            MR. KING:  And it puts you -- just like  
15    Mr. Blackburn testified to.  You see the beware of the  
16    dog signs.  You have to go investigate that.  You're on  
17    notice.  That dog's got to be moved.  He says that in his  
18    own deposition.  You know, you take on a duty.  You have  
19    the duty to do it in a non-negligent manner.  That's one  
20    issue.

21            The other issue is they had total ability to  
22    take care of this dog.  You know, Pasman was on a  
23    month-to-month lease.  And at any time they could have  
24    not -- they could have told him, hey, you're done.  
25    Either you or the dog's got to go.  And Mr. Blackburn

1 says that. Mr. -- you know, the admissions. You know,  
2 we sent out admissions. Can you see the sign from the  
3 road? You know, we got some kind of smart aleck, you  
4 know --

5 THE COURT: Okay. Before you go any further  
6 with that, what I'm going to next ask is the beware of  
7 dog sign.

8 MR. KING: Yep.

9 THE COURT: Any other record evidence that East  
10 Winds had actual knowledge?

11 MR. KING: Well, if you take Miss --  
12 Mrs. Anderson's affidavit. You know, this dog is  
13 barking, biting, lunging at everyone.

14 THE COURT: So then --

15 MR. KING: You know, how --

16 THE COURT: So just wait. So the evidence in  
17 Miss Anderson's affidavit you want the Court to consider  
18 is her statement --

19 MR. KING: Of course.

20 THE COURT: -- that she believes that they knew  
21 about it.

22 MR. KING: And more than that.

23 THE COURT: Okay. The Court is not going --  
24 for purposes of this summary judgment motion with East  
25 Winds Court, Inc., the Court acknowledges what she saw or

1 she experienced when looking at in a light most favorable  
2 to the plaintiff in this case. What I'm just wondering  
3 about right now is the specific knowledge that East Winds  
4 had. So in that affidavit when I went through it there  
5 was one statement about what she believes. Is there any  
6 other statement I'm not reading in that affidavit that  
7 says that East Winds saw this, experienced it, they were  
8 there, they knew it?

9 MR. KING: Yes. There is the evidence in her  
10 affidavit where she says that dog was aggressive with  
11 every single person that was there. It isn't possible  
12 for East Winds to have not known about it in five years.  
13 That dog was trying to attack lawn mowers. That dog  
14 was -- that was a very dangerous pit bull and she talks  
15 about that. She talks about the barking. It's  
16 impossible that East Winds did not know about it. If you  
17 take what she says as true in her affidavit, which for  
18 summary judgment we must, then it is impossible that that  
19 went on for five years without East Winds knowing about  
20 it. You know, if you can see the signs from the road and  
21 you can see the dog and the dog is that aggressive, you  
22 can't just sit back and say, oh, I -- you know, I didn't  
23 know it was aggressive. You know, you -- you know, East  
24 Winds knew all about this.

25 THE COURT: Okay. All right. And then

1 anything else in the record? So I have Miss Anderson's  
2 affidavit, the signs.

3 MR. KING: Mr. -- Mr. Galvin's statement to the  
4 adjuster. It just seems like the dog -- it was always  
5 way back at the end of his lot so I never really got to  
6 know the dog. He didn't even bark when I came up to the  
7 house, so I really -- they don't have to -- they're not  
8 required to tell me if they have a pet unless it's on our  
9 property. You know, none of that turned out to be true.  
10 The dog was never kept in the back. The dog barked all  
11 the time. And he knew about the dog.

12 And by the way, the policy right in Pasman's  
13 lease it says only harmless, non-vicious, safe pets such  
14 as domestic dogs, etcetera, are allowed without prior  
15 written consent of the landlord. And they had this large  
16 dangerous pit bull that had to be given away from  
17 Pasman's daughter to Pasman. He lived at the end of a  
18 chain. He was there for years. The beware of the dogs  
19 signs were put up right away. The veterinary says, you  
20 know, listen, this is a -- this is a headstrong big  
21 bodied aggressive dog. Turned out Marco had been in  
22 fights before.

23 Question, when you would visit East Winds, as  
24 you stated you did on a regular basis, what did you do  
25 when you went out there? What did I do when I went out

1 there? Correct. I would drive up and down the courts,  
2 make sure the lots are clean, cars aren't parked on the  
3 street during the winter so I can do the snow removal.  
4 Anything that was a violation of the rules or maybe I saw  
5 a coming problem, I would check it out. He drove by  
6 those signs which you can see from the road from their  
7 admissions every day for years. Knowledge to the agent  
8 is knowledge to the principal. There is definitely a --  
9 the landlord in my opinion knew. In my opinion the  
10 landlord very definitely should have known. And this  
11 attack was totally, totally preventable and foreseeable.

12           Galvin's answer, deposition page 10 line 17  
13 through 23. No. I knew it was a fairly good-size dog,  
14 but it wasn't huge. I am -- I don't think it's as big as  
15 my lab, but I don't know. Somewhere in -- like I said it  
16 wasn't -- I wasn't -- it wasn't close enough to really  
17 know. I don't remember because like I said it was in the  
18 back and I never went back to introduce myself to the  
19 dog. You know, number one, the dog's never in the back.  
20 Number two, Galvin says, you know, that he -- they did  
21 check out the dog. And here in his deposition he says,  
22 well, I never went in the back to introduce myself to the  
23 dog. Well, which is it, Mr. Galvin? Did you go back and  
24 introduce yourself to the dog like you said or did you --  
25 the dog was in the back and you never went back and

1 introduced it, but you clearly saw the beware of the dog  
2 signs. Maybe you were -- you saw the beware of the dog  
3 signs and were afraid to go up to it. But the jury needs  
4 to decide whether East Winds should have known under all  
5 these facts.

6           You know, they talk about this Ridley versus  
7 Sioux Empire Pit Bull Rescue. Those -- those people had  
8 had that dog for days. They were watching the dog. They  
9 had it for days. It was in a park. You know, this is --  
10 this is a vicious animal, a junkyard dog chained up in a  
11 mobile home park with all the other tenants there. And  
12 the basketball hoop is right out front playing on East  
13 Winds private property. Right in front of the basketball  
14 hoop, what did they think was going to happen? You know,  
15 it's entirely foreseeable what happened here. Duty  
16 arises from foreseeability of harm. You know, you can  
17 look at McGuire versus Jefferson Speedway for that  
18 proposition.

19           Miss Anderson's statement in her -- in her  
20 affidavit, you shouldn't walk up to this dog. Marco  
21 barked at every single passerby. Marco would attack  
22 anyone within his reach. She stated that under oath.  
23 She stated Marco never should have been allowed into the  
24 court. It is her belief that East Winds Court was aware  
25 of Marco and that Marco was dangerous. And a jury should

1 be able to decide whether -- you know, whether it's true.  
2 Did East Winds really know about it? And am I going to  
3 be able to come up with an admission from you and point  
4 to something where East Winds says, you know, something  
5 we really did know the whole time and --

6 THE COURT: And I think you've made your point  
7 with that. I don't -- the Court has seen the record and  
8 is aware of what specific evidence there is. So anything  
9 else you want to discuss regarding the foreseeability of  
10 what was known or should have been known?

11 MR. KING: When you look at Mr. Blackburn's  
12 statement to the insurance adjuster on March 9th, the  
13 question is so the property manager and yourself were not  
14 aware of the tenant dog much less of it being a pit bull?  
15 You know, that question is not true because Galvin said  
16 he saw the dog and was aware of it.

17 Then the next statement from the adjuster, now  
18 this pit bull was chained outside. Is this something the  
19 manager never observed or yourself? Answer by  
20 Mr. Blackburn, I -- I -- I never did. Whether my  
21 property manager did, I don't know. When I see chained  
22 -- chained, he could have been tied, but he was in  
23 Pasman's yard. Question, so we don't know if he actually  
24 had a collar or leash on him? Answer, oh, the dog was  
25 restrained. He was tethered, but I don't know if it was

1 a chain or a rope. Well, how does -- how does  
2 Mr. Blackburn know if he never saw the dog, but he's  
3 talking about how they restrained the dog.

4 Josh Eagleman, you know, Josh Eagleman I think  
5 is like twelve or fourteen years old. You know, did all  
6 the neighbors know that grandpa had Marco? Yeah. How  
7 would they have known that, Josh? Because he's outside  
8 all the time. And, you know, Galvin drives by every day.  
9 Every day he sees the beware of the dog signs.

10 You know, you -- you know, they have the one  
11 case where they say you can't look at a beware of dog  
12 sign in isolation. Okay. And that case is totally --  
13 totally distinguishable. But you can't not consider that  
14 evidence either. When you put up beware of the dog signs  
15 for years it's because it's foreseeable that the dog is  
16 dangerous. And for a property manager to ignore that  
17 every single day over fourteen hundred times, in my  
18 opinion did Mr. Galvin see those signs? Yeah. He had to  
19 have. And I think he knew. And -- and why he didn't do  
20 more, I don't know. Maybe he never foresaw this terrible  
21 of an injury coming. But I tell you what. Kaleb Burgi's  
22 had six surgeries, eight surgeries on his face, you know,  
23 because there's this too damn -- this huge dog, two  
24 beware of the dog signs. If you pay -- you know, if you  
25 listen to Eagleman and Pasman and Anderson, this is a



1 damn dangerous dog. And we've got a property owner and a  
2 property manager saying, oh, we didn't know about it.  
3 And that cannot be a complete defense. You can't just  
4 come to court and say -- you know, they have the burden.  
5 They have the burden of proof in a summary judgment case.  
6 We have established by -- when you look at the totality  
7 of the circumstances which Rowland versus Log Cabin Bar  
8 which the Gehrts Courts says that you have to do. When  
9 you look at the totality of the circumstances is it  
10 foreseeable that Marco is going to bite somebody? It's  
11 totally foreseeable, totally foreseeable.

12 THE COURT: All right. Anything else?

13 MR. KING: You know, Mr. Blackburn -- you know,  
14 the statements are equivocal, equivocal. His deposition  
15 page 11, would you see dogs in the court? Answer, I  
16 don't have an independent recollection of that, but I'm  
17 sure that I've seen dogs in the court. You know, it's  
18 not -- it's not a yes or no.

19 One moment, Your Honor. Mr. Pasman's  
20 deposition on page 9 line 29 -- page 29 line 20, the  
21 whole neighborhood knew about Marco. Pasman's deposition  
22 page 39 line 15, you would have had to be blind not to  
23 see the beware of the dog signs I put on my trailer.  
24 Pasman testified that Galvin knew about the dog, Pasman  
25 deposition page 60 lines 11 and 12. Pasman testified

1 that Galvin knew about the beware of the dog signs,  
2 Pasman deposition page 60 lines 15 through 17. Their  
3 response to admission number 18, admit that East Winds  
4 Management was aware Ron Pasman had a dog, Marco, prior  
5 to September 3rd, 2017. You know, answer to admission  
6 number 24, admit or deny that you or your agents  
7 including Ron Galvin regularly inspected East Winds Court  
8 for potential dangerous condition -- conditions including  
9 dogs. Admit that Ron Galvin was on site of East Winds  
10 Trailer Court on a somewhat regular basis and would have  
11 observed, reported and/or attempted to correct a known  
12 dangerous condition.

13           You know, I don't know what more everybody  
14 could have done to tell East Winds that the dog was  
15 dangerous. You know, absent taking down an ad in the  
16 newspaper, you know, that East Winds -- East Winds had to  
17 know. Galvin had to know. He knew about the dog. What  
18 happened here is totally foreseeable. Thank you, Your  
19 Honor.

20           THE COURT: Thank you. I want to make sure in  
21 the deposition --

22           MR. KING: Your Honor, may I say one other  
23 thing?

24           THE COURT: Yeah. Let me ask you a question  
25 first. I want to make sure in any of the depositions

1 because you would cite to specific parts, but you  
2 included bulk of the deposition. And in any depositions  
3 was there ever anyone that testified that they told East  
4 Winds Trailer Court about the -- about what they observed  
5 with the dog?

6 MR. KING: You know, I think Pasman says, you  
7 know, the whole neighborhood knew that I had the dog.  
8 Pasman testified you'd have to have been blind not to see  
9 the beware of the dog signs, that the dog was always  
10 chained to his front hitch on his trailer.

11 THE COURT: My question was did anyone -- for  
12 example, I know the neighbor affidavit didn't say she  
13 told East Winds, but was there anywhere else in the  
14 deposition where they were ever told about the dog? Did  
15 anyone in the --

16 MR. KING: Pasman's deposition page 60 lines 15  
17 through 17, Galvin knew about the beware of the dog  
18 signs.

19 THE COURT: Okay.

20 MR. KING: Pasman testified you'd have had to  
21 have been blind not to see him.

22 THE COURT: All right. Then you had one other  
23 thing you wanted to mention?

24 MR. KING: Yes, Your Honor. In Gehrts this  
25 Court held that even when an owner doesn't know that

1 animal's dangerous propensities, the ordinary standard of  
2 foreseeability will still be applied. Thus, in such a  
3 case against a dog owner, a plaintiff must establish that  
4 an ordinary prudent person, the owner, should have  
5 foreseen the event that caused the injury and taken steps  
6 to prevent the injury. Liability arises depending on the  
7 kind and character of the particular animal concerned.

8 Well, the kind is a pit bull. The character is as  
9 Miss Anderson -- Mrs. Anderson testified to, as to  
10 Mr. Pasman testified to, as to Eagleman testified to.

11 The circumstances in which it is placed. Well,  
12 it's a guard dog. Pasman testifies to that over -- you  
13 know, it's for protection. You know, the purposes for  
14 which it's employed or kept. This isn't a lap dog. This  
15 isn't a hunting dog. This is a personal protective  
16 device that this person had. And the duty to foresee  
17 risk is depending on all the surrounding circumstances  
18 and may require -- require further investigation or  
19 inquiry. And that's the Small versus -- and that is the  
20 Gehrts, the dog bite case, talking about Teresa Ann Small  
21 versus McKennan Hospital where Teresa Ann Small was  
22 brutally attacked on Avera McKennan's hospital grounds.

23 Whether -- in Log Cabin the Supreme Court  
24 stated whether Log Cabin knew of any dangerous  
25 propensities the dog had is not the sole factor. So when

1 we keep talking about what East Winds knew subjectively,  
2 it's not the sole factor. When considering the  
3 foreseeability question, all the surrounding facts and  
4 circumstances should be examined to determine the  
5 foreseeability question. And the Supreme Court goes on  
6 and talks about, you know, questions of negligence,  
7 contributory negligence, assumption of the risks are all  
8 for the jury in all but the rarest of cases. This is not  
9 one of those cases where we could say as a matter of law  
10 Galvin didn't know when Galvin says he does know about  
11 it. He admits he knows about the dog, admits he saw it.  
12 He says -- later on he says, well, maybe it was in the  
13 back and maybe I didn't go out there. And on another  
14 case he says, well, I did go back there. Of course, the  
15 dog was never back there. And he says he missed the two  
16 beware of the dog signs posted out front. But like  
17 everyone else says, everyone saw that. Everyone knew  
18 about Marco. For East Winds to say they didn't know is  
19 ludicrous. And it doesn't take away the foreseeability  
20 issue either.

21 So thank you, Your Honor.

22 THE COURT: Thank you. All right. So I will  
23 give last word, it's your motion, Mr. Arndt. The one  
24 thing I want you to really address, though, is the  
25 foreseeability argument that was made. And in light of

1 the argument made by Mr. King as well as the affidavit  
2 that was filed by Ms. Anderson and whether that --

3 MR. ARNDT: Sure.

4 THE COURT: -- raises a question of fact that  
5 this matter should go before a jury.

6 MR. ARNDT: Thank you, Judge. I will focus on  
7 those topics. I'll start with the affidavit of  
8 Miss Anderson which is relatively short. And obviously  
9 the Court can review it and take it for what it's worth,  
10 but I think the Court is correct in its questioning of  
11 plaintiff's counsel that the affidavit itself does not  
12 provide any specific information that East Winds would  
13 have had knowledge of any dangerous propensities of  
14 Marco. The best that Miss Anderson's affidavit states is  
15 the belief paragraph, paragraph 16. But, of course,  
16 again that's just her subjective belief. It's not  
17 knowledge that she even says in her affidavit is  
18 impugnable to East Winds. She just says she believes  
19 East Winds should have known. And I think when you  
20 consider her affidavit as a whole and the argument about  
21 the length of the time of the dog being present, which  
22 Miss Anderson's affidavit actually says at least two  
23 years. If you want to take plaintiff's counsel's  
24 argument that it's four or five years, you'd have to ask,  
25 you know, if the dog was so dangerous why wouldn't the

1 neighbor report it to the landlord? And I think you  
2 combine that with record evidence in the case of  
3 plaintiff's own testimony. In Miss Burgi's own testimony  
4 as a tenant of the property that is I think three to four  
5 lots away from Mr. Pasman, didn't even know herself that  
6 Marco existed let alone any evidence of dangerous  
7 propensities of the dog that she would have reported to  
8 East Winds. She states -- we had a chance to depose her.  
9 She states very plainly that she didn't know Marco  
10 existed, and therefore, she did not ever make any  
11 complaints to East Winds of Marco's presence. So I think  
12 those things need to be considered within the context of  
13 Miss Anderson's affidavit. The bottom line is  
14 Miss Anderson's affidavit does not directly attribute any  
15 knowledge of Marco to East Winds.

16 I don't know if the Court mentioned that I  
17 should address the beware of dog sign issue, but I guess  
18 I would just quickly say as we stated in our prior briefs  
19 that in our view the lone authority -- recognizing that  
20 it's from outside of South Dakota, the lone authority we  
21 were able to locate on that issue of our case does say  
22 the presence of a beware of dog sign is not sufficient to  
23 put someone on notice that the dog is vicious or should  
24 have a legal duty particularly towards a landlord.

25 The one case, as I was reviewing the briefs

1 during oral arguments just moments ago, was found on page  
2 four of East Winds first reply brief, the May 5th reply  
3 brief, the Smedley v. Ellinwood case, 21 A.D.3rd --

4 THE COURT: You're going to have to say the  
5 citation over again. You're fading out.

6 MR. ARNDT: Sure. Sorry, Your Honor. It is 21  
7 A.D.3rd 676, New York Appellate Division 2011. And that  
8 case we quoted states the presence of a beware of dog  
9 sign standing alone is insufficient to impute notice of  
10 the dog's viciousness on a landlord or even that the dog  
11 is vicious or dangerous. And, of course, that makes  
12 sense. I mean, at some point do we start charging  
13 landowners with additional liability for actually even  
14 putting up a beware of dog sign? I can think of plenty  
15 of circumstances where an otherwise docile dog the  
16 landowner may place a beware of dog sign on his property  
17 because it seems quite natural that almost every dog,  
18 big, small, medium, whatever the breed is protective of  
19 its own property. The presence of a beware of dog sign  
20 itself, even if East Winds knew of those signs or should  
21 have known of those signs, is not enough to create a  
22 legal duty.

23 THE COURT: But how about --

24 MR. ARNDT: The last point --

25 THE COURT: I've got a question. How about



1 considering the fact Mr. Blackburn said he would have  
2 inquired further had he seen the sign? Does that -- I  
3 mean, doesn't that then create a question of whether or  
4 not he should have seen the sign? It was out there for a  
5 period of time. He or his agent have driven by there  
6 many times. Doesn't that then create a question of  
7 whether or not it should have been seen and does create a  
8 duty?

9 MR. ARNDT: I think the short answer to that  
10 question, Your Honor, is no. Because even if they would  
11 have seen the sign, again our position is foreseeability  
12 is not enough to establish vicious propensities of the  
13 dog or an obligation upon a landlord to inquire further.

14 And I would note on that point and I think this  
15 is important because it's part of our argument overall  
16 that has kind of gotten lost as the case has taken this  
17 path towards any evidence to indicate knowledge upon East  
18 Winds is the overlying conduct. Again cited in our reply  
19 brief on page four --

20 THE COURT: Can you just say your last sentence  
21 over, the overlying --

22 MR. ARNDT: Sure. Well, our overlying position  
23 that the landlord does not owe a duty to a third party to  
24 prevent this type of an injury. The argument -- and I'll  
25 repeat it for the Court. The argument is found in our

1 brief. The authority is cited in our brief on page 4 of  
2 our May 5th, 2020, brief. And I think it's important  
3 this would be a part of the Court's decision in the event  
4 the Court grants the motion for summary judgment that in  
5 and of itself the South Dakota Supreme Court has made it  
6 clear that the landlord-tenant arrangement doesn't create  
7 a special relationship. The Smith decision from 2002,  
8 the South Dakota Supreme Court states that landlords have  
9 a duty to maintain the same physical condition of the  
10 common --

11 THE COURT: You said the landlord has the duty  
12 to maintain and it kind of went out, about the common  
13 area.

14 MR. ARNDT: Maybe this will help. This is the  
15 Smith decision, 2002 S. D. 37. And it states that  
16 landlord-tenant arrangement creates no special  
17 relationship, but landlords have a duty to maintain the  
18 safe physical condition of the common areas within their  
19 exclusive control.

20 There's another decision which is the Clauson  
21 decision, a 1991 South Dakota Supreme Court case, which  
22 says a landlord having parted with full possession of the  
23 premises to the tenant is not liable for injury to third  
24 persons caused by the tenant's negligence, which is what  
25 the plaintiff is claiming in this case by suing East

1 Winds and not Mr. Pasman. The landlord-tenant  
2 relationship doesn't create this special duty towards  
3 other parties to prevent the tenant from causing harm to  
4 other parties. And that's, I guess, part of the argument  
5 that I think is getting lost in the big picture of our  
6 motion for summary judgment is that the plaintiff has  
7 only sued the owner of the dog -- or excuse me, only sued  
8 East Winds, not the owner of the dog, and there is not a  
9 legal duty for the landlord to prevent Mr. Pasman from  
10 injuring other people.

11 There's no dispute that this incident occurred  
12 on Mr. Pasman's lot and that he was the owner of the dog.  
13 Those facts in and of themselves particularly without any  
14 evidence to indicate East Winds was aware of the  
15 dangerous nature of the dog is enough to grant summary  
16 judgment because it's a lack of legal duty that East  
17 Winds would have owed to the Burgis.

18 THE COURT: All right. Anything else? I want  
19 to make sure. Sometimes you fade out.

20 MR. ARNDT: No. I'm sorry. I hope the Court  
21 caught all of that, but the same argument again was made  
22 in our reply brief which is the May 5th, 2020, brief.  
23 And the citations I was referring to is on page four.

24 THE COURT: All right. Okay. The Court --

25 MR. KING: Can I make a brief rebuttal?

1           THE COURT: Well, I'll let you make a brief,  
2 just a minute or two.

3           MR. KING: Okay. Just one minute or two.  
4 Blackburn's deposition, did you see the picture there was  
5 a van in the driveway with the beware of dog sign in the  
6 front trailer? Answer, I did not see that before, but I  
7 do now. Yes. I see it. So you've never seen that? In  
8 times you've been on the premises you've never seen those  
9 signs? No. I can assure you I didn't see those signs or  
10 I would have taken action. What action would you have  
11 taken? I would have investigated. Somebody puts up  
12 beware of the dog signs, they must have knowledge that  
13 their dog could be a problem. And we're just not going  
14 to allow problem dogs. That is one thing.

15           The other thing is the case they cite to,  
16 Dougherty, the landlord was an absent landlord. And the  
17 person that was bit had been bitten before by the same  
18 dog. That's completely different than this one where we  
19 have not just a landlord, it's local. But we also have a  
20 property manager on site. And it's the property  
21 management's duty to protect the other tenants of  
22 foreseeable risk of harm.

23           Thank you, Your Honor.

24           THE COURT: Thank you. All right. The Court  
25 is going to make the decision in this matter. If the

1 Court intends to do that orally, I'll email the parties  
2 to set up a time or set up a phone conference or a Zoom  
3 for the Court to do that, otherwise I'll just submit a  
4 written decision. All right. If there's nothing else,  
5 the parties are excused. Thank you.

6 MR. KING: Thank you, Your Honor.

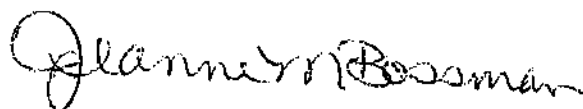
7 MR. ARNDT: Thank you, Your Honor.

8 (Proceedings concluded at 12:26 p.m.)  
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1 STATE OF SOUTH DAKOTA)  
2 ) ss CERTIFICATE  
IN CIRCUIT COURT)

3 I, Jeanne M. Bossman, Court Reporter and Notary Public  
4 in and for the State of South Dakota, do hereby certify that  
5 the foregoing transcript, consisting of pages 1-36,  
6 inclusive, is a full, true and correct transcript of my  
7 original stenograph notes of the evidence offered and  
8 received and proceedings had in the aforementioned action.

9  
10 Dated this 11th day of March, 2021.  
11  
12

13 

14 \_\_\_\_\_  
15 Jeanne M. Bossman, RPR  
16 Official Court Reporter  
17 Notary Public  
18 Commission expires: 12-12-22  
19  
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25



1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT  
2 ) ss  
COUNTY OF YANKTON) FIRST JUDICIAL CIRCUIT

3 \*\*\*\*\*

4 TERESA BURGI, INDIVIDUALLY,  
5 AND TERESA BURGI, AS GUARDIAN  
AD LITEM FOR KALEB RAYMOND  
6 BURGI,

7 Plaintiffs,

66CIV19-000261

8 -vs-

COURT'S RULING

9 EAST WINDS COURT, INC.,

10 Defendant & Third-Party Plaintiff,

11 -vs-

12 RONALD PASMAN,

13 Third-Party Defendant.

14 \*\*\*\*\*

15 DATE & TIME: September 25, 2020, at 2:00 p.m.

16 BEFORE: THE HONORABLE DAVID D. KNOFF  
CIRCUIT COURT JUDGE  
Yankton County Courthouse  
17 Yankton, South Dakota 57078

18 LOCATION: Yankton County Circuit Courtroom  
Yankton County Courthouse  
19 Yankton, South Dakota 57078

20 APPEARANCES: For the Plaintiffs:  
Mr. David J. King (by phone)  
21 Attorney at Law  
141 N. Main Ave., Ste. 700  
22 Sioux Falls, SD 57104

23 For the Defendant:  
Mr. Mark J. Arndt (by phone)  
24 Attorney at Law  
P. O. Box 2790  
25 Sioux Falls, SD 57101-2790



1 THE COURT: This is the time set for the Court's ruling  
2 in Yankton County civil file 19-261. It's Teresa Burgi as  
3 guardian ad litem for Kaleb Raymond Burgi, a minor child,  
4 versus East Winds Trailer Court, Incorporated. David King  
5 is appearing on behalf of the plaintiff and Mr. Arndt is  
6 also appearing telephonically on behalf of the defendant.

7 The Court has had an opportunity to review the  
8 statement of uncontested material facts, affidavits,  
9 evidence on record, and then the briefs that were submitted  
10 by the parties. The Court notes that there was a delay that  
11 was granted to the plaintiff to do additional discovery  
12 which has been done and this is the Court's ruling.

13 So the defendant has made a motion for summary  
14 judgment. And it is clear in this case that -- well,  
15 motions for summary judgment are appropriate when viewing  
16 the facts that are presented to the Court in light most  
17 favorable to the non-moving party, that there really are no  
18 questions of fact that need to go before the jury. What  
19 we're addressing is the defendant entitled as a matter of  
20 law to summary judgment because there are no uncontested  
21 facts that would cause the Court to not be able to rule in  
22 favor of the defendant.

23 So in looking at the facts in this case -- and the  
24 Court notes it's an unfortunate set of facts where a child  
25 was bitten by a dog and had serious injuries from the dog

1 bite. That dog was owned by a tenant of the defendants.  
2 The defendant is a landlord who owns a trailer court. The  
3 tenant is Ron Pasman. He has a lease with the defendant.  
4 That lease allows that he has a lot where he has a trailer  
5 home. He lives in that trailer home and that is where he  
6 kept the dog that bit the plaintiff, the child.

7 The dog bit the child on the tenant Ron Pasman's  
8 lot. There is a common area next to the tenant's lot that  
9 has a basketball hoop that's been evidenced by photographs  
10 that were made part of the pleadings that were presented by  
11 the parties; that there were kids playing basketball in that  
12 area. The plaintiff was with some other boys playing  
13 basketball when the ball went onto the tenant's lot and then  
14 the plaintiff was then bit.

15 Now whether the ball was the same ball that the  
16 kids were playing with or a different ball, when the Court  
17 read the depositions it appeared that there's a question  
18 there because it may have been that the plaintiff Kaleb was  
19 going after a flat basketball or a flat ball that was in the  
20 yard, but that's really not dispositive or necessarily an  
21 important fact.

22 The Court also notes there's an affidavit from  
23 next-door neighbor Mrs. Anderson. And she put in her  
24 affidavit that she did experience or observe the dog act in  
25 a -- considered to be an aggressive or dangerous manner.

1 Also Mr. Pasman infers that the dog can be dangerous.

2 Now the Court also finds that other witnesses that  
3 were deposed had really no knowledge of the dog of any type  
4 of dangerous propensity, including Teresa Burgi who stated  
5 she didn't even know that Mr. Pasman had a dog.

6 The Court notes that there's no facts to show that  
7 the defendant through John Blackburn or through the property  
8 manager Mr. Galvin had any direct knowledge of the dangerous  
9 propensity of the dog before the incident that took place  
10 where the child was injured.

11 The Court finds there were beware of dog signs on  
12 Mr. Pasman's property that were visible to the general  
13 public. The dog was visible out front chained up from time  
14 to time and that the property manager would drive through  
15 the trailer park and had an opportunity to observe those  
16 things. The Court finds that there was -- well, there was  
17 nothing presented that Mr. Galvin or Mr. Blackburn ever  
18 actually saw a beware of dog sign.

19 Mr. Galvin was aware that there was a dog. There's  
20 some evidence that he encountered the dog and I think maybe  
21 even touched the dog or pet the dog, but no evidence that  
22 any aggressive tendencies were shown at that time. The  
23 Court -- there's no facts to show that again that the  
24 defendant or defendant's agents had any actual knowledge of  
25 any dangerousness of the dog.

1           Now the affidavit of Mrs. Anderson the Court  
2 believes needs to be addressed. And she states in there  
3 that she believes that the defendant knew about the dog and  
4 its dangerous tendencies. Nothing else in the affidavit  
5 gave rise to the basis for that belief and so the Court can  
6 only ascertain from that that it would be speculative on her  
7 part that there would be any knowledge by the defendant.  
8 And obviously any evidence that's presented to the Court for  
9 motion for summary judgment needs to be admissible evidence  
10 and that that's not -- that's insufficient because it is  
11 speculative to show or prove that the defendant would have  
12 actual knowledge. And then it's really not helpful to the  
13 Court to even impute any kind of knowledge because again it  
14 really never sets out why the defendant should have that  
15 knowledge. So those are the facts.

16           So the Court then looks at the duty of the  
17 defendant that's required. The Court finds the case of  
18 Clauson v. Kempfer, C-L-A-U-S-O-N, K-E-M-P-F-F-E-R, that's  
19 477 N.W.2d 257. The Court finds that to be very helpful in  
20 analyzing the duty of a landlord to a third person who is  
21 injured on leased property that the tenant has possession  
22 of. And that case first of all sets out the duty or the --  
23 excuse me, the standard for summary judgment that is stated  
24 more succinctly than the Court states on its own. If facts  
25 are undisputed, the issue becomes one of law for the Court

1 to decide in a summary judgment analysis. Typically it's  
2 not appropriate in negligence actions because we have that  
3 reasonable person standard or the reasonable person standard  
4 that's applied to conflicting testimony, but again we have  
5 really undisputed facts. So the determination of whether a  
6 defendant owes a duty to a plaintiff does not require an  
7 examination of the facts in this case. It's a question of  
8 law and summary judgment is appropriate when the Court  
9 resolves the duty -- or resolves what the duty is and  
10 determines whether or not then summary judgment is  
11 appropriate.

12 So a rule regarding landlord's liability is that a  
13 landlord having parted with full possession of the premises  
14 to the tenant is not liable for injury to third persons  
15 caused by the tenant's negligence. Now there can be  
16 exceptions to that rule. One of the exceptions is if  
17 there's a common area, then if there is a danger if the  
18 tenant knew of it or had reason to know of it, then the  
19 landlord can be liable. And there was much argument about  
20 the location of a basketball hoop to Mr. Pasman's lot, but  
21 clearly by the testimony of Ms. Burgi that this took place  
22 on the lot, photograph that's in evidence showing the chain  
23 which is clearly on Mr. Pasman's lot, the concrete driveway  
24 area directly in front of his trailer, clearly this did not  
25 take place in the common area. This took place on the

1 leased premises. The Court believes that the fact that it's  
2 not on common ground is really fatal to the plaintiff's  
3 claim because the duty stops there and summary judgment is  
4 appropriate because of that.

5 The Court will still, though, address some other  
6 items that were addressed by the plaintiff in this case.  
7 The fact that there is a beware of dog sign. And really  
8 this would be important if we got into the common area, if  
9 this took place in the common area which it didn't, which  
10 then would give rise to was there a reason to know. The  
11 Court does believe that it's persuasive authority that was  
12 provided about the presence of a beware of dog sign. The  
13 case of Smedley, S-M-E-D-L-E-Y, v. Ellenwood,  
14 E-L-L-I-N-W-O-O-D, and that's 21 A.D.3d 676 out of New  
15 York. First of all the Court does not believe the standard  
16 is the same because it talks about a landlord being liable  
17 if the -- if they have constructive knowledge of the vicious  
18 propensities. So it doesn't really address the common area  
19 factor which the Court believes is necessary.

20 But the presence of a beware of dog sign standing  
21 alone is insufficient to impute notice of a dog's  
22 viciousness. The Court believes there's good public policy  
23 for that rule. And to post a sign and that has the affect  
24 to impute liability to an owner just is far reaching. And  
25 here there are no other facts that the landlord has any

1 specific knowledge or even has reason to believe that there  
2 is a vicious dog.

3 There's also the Doctrine of Attractive Nuisance  
4 that was brought up by the plaintiff and the Court does not  
5 believe that would apply here. The argument is that the  
6 basketball creates an attractive nuisance for these children  
7 to play and they're next door to the tenant's lot which has  
8 this dog. Well, the Attractive Nuisance Doctrine the Court  
9 believes would apply if the children were injured playing  
10 basketball or on the basketball hoop, so the nuisance itself  
11 creates the injury that we talk about. Here it was a dog.  
12 It wasn't the basketball hoop. The fact that the basketball  
13 hoop was near a location where the dog was at, really the  
14 Court does not believe in any way or cannot find any way  
15 that that then triggers the Attractive Nuisance Doctrine.

16 So then finally there is an issue of breach of  
17 contract that was raised. And the Court does not believe --  
18 cannot find any basis that there is any type of contract  
19 between the plaintiff and the defendant as it relates to  
20 Mr. Pasman's dog. There may -- there are some contractual  
21 obligations as between the plaintiffs -- well, Miss Burgi  
22 and the defendant and also Mr. Pasman and the defendant as  
23 it's set out in their leases, but nothing connects the child  
24 who is injured and the defendant as it relates to  
25 Mr. Pasman.

1           The Court notes that when I reviewed the lease the  
2 contract between the parties maintains the liability of an  
3 animal strictly with the tenant and the tenant is  
4 responsible for any injuries caused. Now again that may not  
5 apply if this injury were in a common area, but again the  
6 Court just does not find that breach of contract applies in  
7 this case.

8           So based on all of that, the Court is going to  
9 award summary judgment to the defendant. The Court is going  
10 to ask defendant to prepare an order for summary judgment,  
11 Mr. Arndt.

12           Any questions? I'll start with plaintiff,  
13 Mr. King?

14           MR. KING: No, Your Honor.

15           THE COURT: Okay. And, Mr. Arndt, any questions?

16           MR. ARNDT: Just about the scope of the proposed order,  
17 Your Honor. I appreciate the Court making a record of its  
18 findings with its court reporter during today's telephonic  
19 hearing. Does the Court expect us to detail those in an  
20 order or more of a general order granting summary judgment?

21           THE COURT: You can grant -- the general order granting  
22 summary judgment incorporating the Court's analysis as set  
23 out on the record. The Court doesn't make findings of fact  
24 on a motion for summary judgment, but did obviously look at  
25 the facts in this case. In any event if you would just want



1 to go ahead and just incorporate the ruling as part of the  
2 order -- the oral ruling as part of the order. That would  
3 be sufficient.

4 MR. ARNDT: Understood. I'll prepare that and forward  
5 that to the Court in the near future.

6 THE COURT: Okay. Thank you. If there is nothing else,  
7 then the Court will be hanging up. The parties are excused.  
8 Thank you.

9 MR. ARNDT: Thank you.

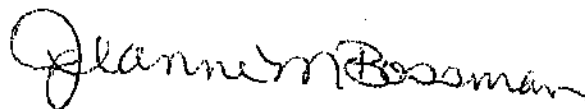
10 MR. KING: Thank you.

11 (Proceedings concluded at 2:20 p.m.)  
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1 STATE OF SOUTH DAKOTA)  
2 ) ss CERTIFICATE  
IN CIRCUIT COURT)

3 I, Jeanne M. Bossman, Court Reporter and Notary Public  
4 in and for the State of South Dakota, do hereby certify that  
5 the foregoing transcript, consisting of pages 1-11,  
6 inclusive, is a full, true and correct transcript of my  
7 original stenograph notes of the evidence offered and  
8 received and proceedings had in the aforementioned action.

9  
10 Dated this 11th day of March, 2021.

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15 \_\_\_\_\_  
16 Jeanne M. Bossman, RPR  
17 Official Court Reporter  
18 Notary Public  
19 Commission expires: 12-12-22  
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<p style="text-align: right;">Page 2</p> <p style="text-align: center;">I N D E X</p> <p>WITNESS      EXAMINATION BY      PAGE</p> <p>Mr. Blackburn      Mr. Rallis      3</p> <p>                         Mr. Arndt      24</p> <p>                         Mr. Rallis      25</p> <p>*****</p> <p>The Zoom deposition of JOHN PAUL BLACKBURN was taken on the 23th day of April, 2020, commencing at 10:38 a.m.; said deposition taken before Stacy L. Wiebesiek, RPR, CSR, a Notary Public with and for the State of South Dakota.</p> <p>JOHN PAUL BLACKBURN called as a witness, being first duly sworn, deposed and said as follows:</p>	<p style="text-align: right;">Page 4</p> <p>Q What is your son's name?</p> <p>A Scott Daniel Blackburn.</p> <p>Q How old is Scott?</p> <p>A Five nine, 59.</p> <p>Q Do you practice law now?</p> <p>A Yes.</p> <p>Q And what is your area of practice?</p> <p>A We could say general practice, but it -- primarily wills, estates, litigation, disputes. I do not do bankruptcy. I do not do domestic relations. I do not do criminal law.</p> <p>Q Have you ever had a dog bite case?</p> <p>A Yes.</p> <p>Q How many would you say in your -- in your practice have you ever had, over the years, of dog bite cases approximately?</p> <p>A I'm going to guess four.</p> <p>Q And in those four cases, have any of them been where you've had to pursue the owner of the property rather than the owner of the dog?</p> <p>A No.</p> <p>Q So they've all been where you had to deal with just the dog owner; is that correct?</p> <p>A Yes.</p> <p>Q Do you practice landlord-tenant law?</p>
<p style="text-align: right;">Page 3</p> <p>EXAMINATION</p> <p>BY MR. RALLIS:</p> <p>Q Please state your full name for the record.</p> <p>A John Paul Blackburn.</p> <p>Q And you're an attorney; is that correct?</p> <p>A Yes.</p> <p>Q What is your current address?</p> <p>A 175 Lakeview Terrace, Yankton, South Dakota.</p> <p>Q And how long have you lived there?</p> <p>A Probably 19 years.</p> <p>Q Are you married?</p> <p>A Yes.</p> <p>Q And how many kids do you have?</p> <p>A Two.</p> <p>Q Are either one of them lawyers like you?</p> <p>A No.</p> <p>Q Do your children work for you?</p> <p>A One of them does, yes.</p> <p>Q What does he or she do?</p> <p>A What does he do?</p> <p>Q Yes. For you.</p> <p>A He is a housing manager. We call it the general manager. General managers do everything from manage property to repair electrical, repair plumbing, talk to tenants, anything required of our housing business.</p>	<p style="text-align: right;">Page 5</p> <p>A Well, I -- I engage in landlord-tenant law because of my status as a person who rents property.</p> <p>Q How many rental properties do you have?</p> <p>A A lot.</p> <p>Q Would you say more than five rental properties?</p> <p>A Yes.</p> <p>Q More than ten?</p> <p>A Yes.</p> <p>Q Have you ever had a dog bite incident before on any of your properties?</p> <p>A I don't think so. I'll have to say no. I don't recall any.</p> <p>Q Have you ever had to evict a tenant because of a dog bite incident?</p> <p>A No. Well, now, wait a minute. Ron told you about a tenant we had whose dog was about a half mile off the property and attacked some miniature horses and chickens, and we made them get rid of that dog, and ultimately I got rid of that tenant.</p> <p>Q Okay. Ron was not aware that there was a no pets policy but you're aware, as owner of the property, that some of the leases had a no pets policy; is that correct?</p> <p>A That's not correct. That was a lease by a prior owner, and I had no idea of that lease or its existence until you folks supplied me with it.</p>

<p style="text-align: right;">Page 6</p> <p>1 Q When you purchased the property from D&amp;M, did you 2 not assume all the leases as part of the purchase? 3 A Not to my knowledge I didn't. I wasn't even aware 4 they had a lease. 5 Q When did you purchase the property from D&amp;M? 6 A You know, I looked at that and I -- I thought it was 7 in 2005. I'm not totally sure. 8 Q So you purchased the property but you -- but you 9 were not aware that any of the tenants had leases on the 10 property? 11 A That's true. I don't know when we started with our 12 leases. I think we started with our leases when new tenants 13 came into existence. I don't recall that. I may have -- if 14 you don't mind, I'll add we have never had a no pet policy. 15 Q So East Winds Court -- is East Winds Court owned by 16 you? 17 A It's owned by a corporation of which I own. 18 Q Okay. You're the sole shareholder of that 19 corporation; is that correct? 20 A Yes. 21 Q Okay. And you bought, like you said, many other 22 rental properties; is that correct? 23 A Yes. 24 Q And in all those purchases, you were never -- were 25 you ever provided, as proof of the income of those properties,</p>	<p style="text-align: right;">Page 8</p> <p>1 for East Winds? 2 MR. RALLIS: Correct. 3 THE WITNESS: That's the way I took your 4 question. 5 BY MR. RALLIS: 6 Q Yeah. What did you do to prepare for this 7 deposition today? 8 A I looked at the documents you furnished. I looked 9 at our answers to your interrogatories. I looked at the 10 pictures that you forwarded. I looked at leases you provided 11 and we provided you. I did visit briefly with Mark Arndt, 12 attorney for the matter. 13 Q Okay. So you are the sole owner of that property -- 14 or East Winds Court, Inc. is the sole owner of that property? 15 A Yes. 16 Q And you purchased it in approximately 2005; is that 17 correct? 18 A To my recollection, yes, sir. 19 Q How long have you been in the rental property 20 business? 21 A 49 or 50 years. 22 Q Are other properties that you have also trailer 23 court properties? 24 A No. 25 Q Is this the only rental trailer court property that</p>
<p style="text-align: right;">Page 7</p> <p>1 the leases of those properties? 2 A No. I mean, somebody may have given me a lease, but 3 I have no independent recollection of other leases. 4 Q Well, before buying any of those other properties, 5 wouldn't you want to know what the income is on those 6 properties? 7 A Of course, but I would ask that, and then we would 8 make our own independent determination of rental value and 9 rental charges. Several that I bought over the years have 10 needed fixing. That's the type of rental that I've aimed for 11 is rentals where people need rentals, not somebody that's 12 going to rent for two, three months and then buy a house. 13 Q Uh-huh. So as an attorney, obviously you're 14 familiar with landlord-tenant law. 15 A Somewhat. 16 Q Sure. In South Dakota leases that are longer than a 17 year need to be in writing. Did you know that? 18 A Well, recently a lawyer reminded me of that, yes. 19 Q But month-to-month leases don't need to be in 20 writing; is that correct? 21 A Correct. 22 Q Do you have your own attorney for this matter? 23 A No. 24 MR. ARNDT: Kirk, just to clarify, other than 25 me, you mean, other than Mark Arndt, defense counsel</p>	<p style="text-align: right;">Page 9</p> <p>1 you own? 2 A Yes. 3 Q And you never had to evict a tenant, other than that 4 one that you talked about earlier for -- relating to dog 5 bites; is that correct? 6 A That's correct. 7 Q The open letter that I spoke with Ron earlier about 8 to the tenants dated September 21st of 2017, as you know, Ron 9 said that you helped draft that; is that correct? 10 A I'm sure I had input. 11 MR. ARNDT: Kirk, I'm going to interject the 12 same objection to the form of the question and ask 13 that we have a standing objection to the subsequent 14 remedial measure of the letter post September 3rd of 15 2017. 16 BY MR. RALLIS: 17 Q Okay. And in that letter you talked about, again, 18 that there have been problems with dogs over the last several 19 months and that -- at that point you said, no pit bulls, 20 rottweilers or Dobermans will be allowed; is that correct? 21 A I'll have to get the letter. I know we talked about 22 no pit bulls, rottweilers or -- 23 Q Dobermans? 24 A -- Dobermans, yes. 25 Q So prior to September 3rd of 2017, it was East Winds</p>

<p style="text-align: right;">Page 10</p> <p>1 Court's policy to allow any animals to be on the property; is 2 that correct?</p> <p>3 A No. We allowed dogs, domesticated animals. I think 4 the -- I think the lease said no reptiles, no vicious or mean 5 animals. I don't know whether we said ordinary house pets, 6 but that was the intent.</p> <p>7 Q But when you purchased the property, again, you were 8 not familiar that the tenants had existing leases with D&amp;M 9 that stated no pets?</p> <p>10 A I was not familiar with that until after this dog 11 bite incident with young Kaleb Burgi, and we got that 12 information either through you or through Mr. Arndt. Now, I 13 will say to you, maybe in some -- what the other -- what the 14 prior owner gave us, that he didn't give us much 15 documentation. In fact, it was disappointing to that effect, 16 no schematics, nothing. I don't recall ever having previously 17 seen one of their leases.</p> <p>18 Q When you purchased the property in 2005, did you or 19 did you not have all the tenants sign new leases with East 20 Winds Court following the purchase?</p> <p>21 A My recollection is we did not. If we did, I stand 22 corrected. It was a process of taking over the court, a 23 learning process about particularly the water system, the 24 roads, the conduct on the roads, that kind of thing.</p> <p>25 Q So let me --</p>	<p style="text-align: right;">Page 12</p> <p>1 did have some restrictions and limitations. They were general 2 in scope.</p> <p>3 Q Other than the 1999 lease that Jennifer Pinkelman 4 had with D&amp;M, what other lease agreements do you have with 5 Jennifer Pinkelman and when were they signed?</p> <p>6 A Well, frankly, I don't know. I mean, of my own 7 recollection, I don't know.</p> <p>8 Q But if she did have a lease with East Winds, it 9 would allow for pets including dogs; is that correct?</p> <p>10 A Mr. Hallis, I have reviewed a lease with Jennifer 11 Pinkelman, that's true, and I have -- I believe it's -- 12 provision number 13 allows pets. I looked at that 13 particularly, and, yes, I have seen a copy of a lease with 14 Jennifer Pinkelman. Your first question I answered as I did 15 because I -- I had no contact with Jennifer -- with any of the 16 Pinkelmans or Teresa Burgi.</p> <p>17 Q So you never talked with -- ever with Teresa Burgi?</p> <p>18 A I have talked to her on the phone a few years ago 19 probably more than once but -- maybe two or three times.</p> <p>20 Q The lease that I have provided to me by your counsel 21 is the lease dated April 24th of 2018 that was signed by 22 Jennifer Pinkelman. Are you familiar with that lease?</p> <p>23 A I've looked at that lease, yes.</p> <p>24 Q And in there, as you said in paragraph 13, it talked 25 about pets; is that correct?</p>
<p style="text-align: right;">Page 11</p> <p>1 A Go ahead. I'm sorry.</p> <p>2 Q So if you had a problem with a tenant, you had -- in 3 your -- scratch that. So following the purchase of 2005, if 4 you had an issue with a tenant that needed to be evicted, East 5 Winds Court hadn't -- did not have any contractual relations 6 with any of the tenants, is that what you're saying?</p> <p>7 A To my knowledge -- when you say contractual 8 arrangements, I don't think we had written leases, I don't 9 think.</p> <p>10 Q You wouldn't look to the remedies in the existing 11 leases that they had with D&amp;M?</p> <p>12 A I didn't look at existing leases. What we looked at 13 was their conduct, and I don't think I had to evict a tenant 14 for several years after I took over.</p> <p>15 Q You purchased the property in 2005. How often have 16 you visited the property since that time?</p> <p>17 A Well, it's a guess of course. Maybe an average of 18 half a dozen a year.</p> <p>19 Q And in that time would you see dogs in the court? 20 Bless you.</p> <p>21 A I don't have an independent recollection of that, 22 but I'm sure I've seen dogs at the court.</p> <p>23 Q So East Winds Court did not have a policy against 24 pets; is that correct?</p> <p>25 A We did not have a no pet policy, that's correct. We</p>	<p style="text-align: right;">Page 13</p> <p>1 A I'm looking right now. Wait, that's not the one. 2 I'm looking and I'm not seeing that one. Well, here -- April 3 24 of 2018?</p> <p>4 Q Correct.</p> <p>5 A I now have that in front of me, sir. Your question 6 was did it discuss pets?</p> <p>7 Q Yeah, on paragraph 13 -- you referred to paragraph 8 13, which you were correct.</p> <p>9 A Yes.</p> <p>10 Q It says in the note that the safety of all tenants 11 is a major concern. At this time we are not allowing 12 Doberman, rottweilers or pit bulls on our premises even as 13 guests; is that correct?</p> <p>14 A Are you now talking about the open letter?</p> <p>15 Q No, I'm talking about the lease agreement that 16 Jennifer Pinkelman had with East Winds Court, on that lease 17 agreement that you just had for April 24th of 2018.</p> <p>18 A Are you saying that lease talks about we had 19 problems with dogs?</p> <p>20 Q No, I'm not saying that. I'm saying -- I'm simply 21 pointing out -- do you see paragraph 13?</p> <p>22 A I do.</p> <p>23 Q And what does it say right there on the bottom on 24 the note portion?</p> <p>25 A I frankly can't read it. It's too dim. I can read</p>

<p style="text-align: right;">Page 14</p> <p>1 major concern at this time, not allowing Doberman -- and I'm</p> <p>2 kind of guessing at some of this -- rottweiler and pit bulls</p> <p>3 on property.</p> <p>4 Q Our properties?</p> <p>5 A Our properties even as -- and I can't read that last</p> <p>6 word.</p> <p>7 Q It says guess.</p> <p>8 A What is it?</p> <p>9 Q G-U-E-S-S. I think they meant guests, but that's</p> <p>10 fine. My question to you on that is did you help in the</p> <p>11 drafting of a new lease agreement?</p> <p>12 A Ron usually wrote those lease agreements. I would</p> <p>13 not say I didn't have input, but Ron usually wrote them. Yes,</p> <p>14 I'm a lawyer. Yes, I'm sure I looked at them and had input.</p> <p>15 I think that's the best way I can answer it.</p> <p>16 Q So you were aware, as of September 3rd, 2017, that</p> <p>17 tenants had pets, including dogs at East Winds Court; is that</p> <p>18 correct?</p> <p>19 A Yes.</p> <p>20 Q Were you aware that Ron Galvin, the property manager</p> <p>21 at the time, was aware of the pit bull residing at</p> <p>22 Mr. Pasman's property?</p> <p>23 A No. In fact his statement says he thought it looked</p> <p>24 more like a lab mix.</p> <p>25 Q And you're aware that children reside at East Winds;</p>	<p style="text-align: right;">Page 16</p> <p>1 incident?</p> <p>2 A Yes.</p> <p>3 Q And what did Mr. Pasman have to say about this</p> <p>4 incident?</p> <p>5 A Well, I may have talked to him before the incident.</p> <p>6 I don't recall that. But when I heard about the incident,</p> <p>7 either I called him or he called me and he said there had been</p> <p>8 a dog bite at his property, and I told him that either the dog</p> <p>9 goes immediately or he and the dog go immediately in very</p> <p>10 certain terms.</p> <p>11 Q Did Mr. Pasman ever talk to you about the</p> <p>12 temperament of the dog?</p> <p>13 A Did you say the temperament?</p> <p>14 Q Yes.</p> <p>15 A Well, if this answers your question, he told me the</p> <p>16 dog had never been any problem with anybody.</p> <p>17 Q Did you know that Mr. Pasman had a dog prior to</p> <p>18 September 3rd, 2017?</p> <p>19 A No.</p> <p>20 Q Do you know if Mr. Pasman gave any statements to any</p> <p>21 other parties to this matter?</p> <p>22 A He may have given one to the insurer or maybe -- I'm</p> <p>23 going to have to say I don't know. If I have a copy of one, I</p> <p>24 don't even know it.</p> <p>25 Q Do you know if any of the other tenants have had</p>
<p style="text-align: right;">Page 15</p> <p>1 is that correct?</p> <p>2 A Yes.</p> <p>3 Q And as children often do, they play in each other's</p> <p>4 yards. Are you aware of that?</p> <p>5 A No. I mean, you're asking me if I'm aware of it,</p> <p>6 no. I would assume it, yes.</p> <p>7 Q What were Ron Galvin's -- generally, what were Ron</p> <p>8 Galvin's duties for you as of September 3rd, 2017?</p> <p>9 A Everything management and repair and -- and dealing</p> <p>10 with -- with rental properties entails. Everything from</p> <p>11 literally laying out at 3:00 a.m. at zero trying to repair</p> <p>12 water leaks and insufficiencies, to mowing, to general repair,</p> <p>13 to dealing with tenants, utilities, etc.</p> <p>14 Q Is Ron Galvin a salary employee of yours?</p> <p>15 A I think Ron has always been paid hourly with a</p> <p>16 guarantee, I think.</p> <p>17 Q And how long has he worked for you?</p> <p>18 A Well, we both thought it was about 25 years, but Ron</p> <p>19 has corrected me within the last day or two. He thought it</p> <p>20 was 23 years.</p> <p>21 Q Have you ever met Ron Pasman?</p> <p>22 A Yes.</p> <p>23 Q Have you ever talked with Ron Pasman?</p> <p>24 A Yes.</p> <p>25 Q Have you ever talked to Ron Pasman about this</p>	<p style="text-align: right;">Page 17</p> <p>1 their statements taken as it relates to this matter?</p> <p>2 A I do not know that. I do know that Ron talked to a</p> <p>3 lady or she talked to him, perhaps, about Kaleb Burgi after</p> <p>4 the incident, but I don't think any statement was taken.</p> <p>5 Q Do you know Kaleb Burgi?</p> <p>6 A No, sir.</p> <p>7 Q You know Teresa Burgi though?</p> <p>8 A I know of her. If I've seen her before, I don't</p> <p>9 know it.</p> <p>10 Q So you never ever talked with Teresa Burgi?</p> <p>11 A I did by phone, as I told you, two or three times,</p> <p>12 probably several years ago.</p> <p>13 Q But since September 3rd, 2017, you have never talked</p> <p>14 to Teresa Burgi about this matter?</p> <p>15 A Not to my recollection.</p> <p>16 Q What type of tenant is Teresa Burgi? Meaning from a</p> <p>17 legal status, is she a month to month? What is she for you?</p> <p>18 A Well, from a legal status, frankly, since this</p> <p>19 incident, I have discovered that somebody else owns the home,</p> <p>20 somebody else pays her rent. Legal status was your question.</p> <p>21 I've wondered, frankly, if she is a tenant. She lives there,</p> <p>22 to my knowledge.</p> <p>23 Q Do you know how long she has lived in East Winds</p> <p>24 Court approximately?</p> <p>25 A Quite a few years. Quite a number of years.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q Do you see the picture there of the trailer with the 2 basketball hoop?</p> <p>3 A I'm looking. Yes, sir.</p> <p>4 Q Do you see the beware of dog signs there in that 5 picture?</p> <p>6 A No.</p> <p>7 Q Okay. The one that has the basketball hoop, are you 8 aware that children played basketball in the street?</p> <p>9 A No.</p> <p>10 Q Is that against policy of East Winds Court?</p> <p>11 A Well, I don't know that we've ever had a policy 12 about kids playing in the street. I mean, it's common sense, 13 you shouldn't do it. I would think that would be a parental 14 responsibility.</p> <p>15 Q But you do see that they played basketball there -- 16 they have basketball hoop there in the street?</p> <p>17 A If I can answer without being a smart aleck, I see a 18 standard with blocks on it by the street. I'm going to have 19 to presume it's a basketball hoop, but it does not show. The 20 picture I have shows a boy standing there with part of his 21 head not showing in the picture. I just assume and take your 22 word for it it's a basketball hoop.</p> <p>23 Q Do you see the picture there where it has the van in 24 the driveway with the beware of dog signs on the front of the 25 trailer?</p>	<p style="text-align: right;">Page 20</p> <p>1 Are you aware that Kaleb was 12 years old at the time this 2 happened?</p> <p>3 A No, sir.</p> <p>4 Q Do you know if Mr. Pasman had insurance -- rental 5 insurance on the property?</p> <p>6 A I do not.</p> <p>7 Q Do you require tenants to have rental insurance on 8 the property?</p> <p>9 A No, I believe that the lease -- or maybe just Ron 10 advised people to have renter's insurance, but it's not a 11 requirement.</p> <p>12 Q What other type of rental properties do you have 13 besides rental -- I mean, besides rental properties, what 14 other kind of properties do you own that you -- commercial 15 properties?</p> <p>16 A Single-family dwellings primarily. I have an old 17 8-unit apartment building. I have a -- I have seven units in 18 a small sort of efficiency apartments in my building where my 19 law office is. I have a fourplex in Parker.</p> <p>20 Q In all those properties, do you have lease 21 agreements with the tenants?</p> <p>22 A We try to have them, yes.</p> <p>23 Q On some of the properties, you don't have lease 24 agreements?</p> <p>25 A Well, again, I don't mean to be a smart aleck, but</p>
<p style="text-align: right;">Page 19</p> <p>1 A I did not see that before but I do now. Yes, I see 2 that.</p> <p>3 Q So you've never seen that -- in times that you've 4 been on the premises, you've never seen those signs?</p> <p>5 A No, I can assure you, I did not see those signs or I 6 would have taken action.</p> <p>7 Q What action would you have taken?</p> <p>8 A Well, I would have investigated. Somebody puts up a 9 beware of dog sign, they must have some knowledge that their 10 dog could be a problem, and we're just not allowing problem 11 dogs, then or now, if we know about them.</p> <p>12 Q Have you seen the pictures of Kaleb Burgi following 13 the dog bite that I provided?</p> <p>14 A Yes.</p> <p>15 Q Would you agree that it was a pretty bad dog bite 16 incident?</p> <p>17 A I would agree that his face does not look very good, 18 stitches, etc.</p> <p>19 Q Ron Galvin, as he testified earlier, was aware that 20 Mr. Pasman had a dog for several months prior to this 21 incident. Do you recall that testimony?</p> <p>22 A Yes. I think he said a couple months.</p> <p>23 Q In Mr. Galvin's statement to United Fire Group he 24 answered, I would guess he had the dog three to four months, 25 but it's all relative, two, three, four months, that's fine.</p>	<p style="text-align: right;">Page 21</p> <p>1 somebody else takes care of all that so when I say we try, 2 that's what I mean.</p> <p>3 Q Are you aware of any witnesses to this dog bite 4 incident?</p> <p>5 A Only what I've learned through documentation 6 furnished by you or Mr. Arndt, and that is the two -- or I 7 think it's that sheriff's report -- two grandchildren of 8 Mr. Pasman to my knowledge.</p> <p>9 Q Are you aware that the grandchildren knew of the 10 dog's dangerous propensities according to the report that you 11 cited?</p> <p>12 A No. In that report, the only thing I recall is 13 they -- they told young Mr. Burgi to stay away from the dog.</p> <p>14 Q Because he was dangerous?</p> <p>15 A I don't think it said that. I think they just said 16 stay away from him.</p> <p>17 MR. ARNDT: I'll object to the form. The 18 report speaks for itself. The witness doesn't need 19 to testify to what the report says.</p> <p>20 BY MR. RALLIS:</p> <p>21 Q I'm looking at the statement that Joshua Eagleman, 22 one of the grandchildren that you referred to, in his 23 statement to United Fire Group stated that they were playing 24 basketball prior to this incident. Are you aware of that?</p> <p>25 A No, I never read that statement. In fact, I think I</p>



<p style="text-align: right;">Page 22</p> <p>1 was just furnished that statement. I was gone yesterday, and  2 so I got no emails yesterday. I might have just gotten that  3 statement this morning after I got in.  4 Q In Mr. Joshua Eagleman's statement, Joshua states  5 that Kaleb would come over to Mr. Pasman's yard, but you're  6 not aware of that because you have not read the statement; is  7 that correct?  8 A Yes, sir.  9 Q So what you're saying then is if you knew that  10 Marco, the dog, was dangerous, you would have had it removed;  11 is that correct?  12 MR. ARNDT: I'm going to object to the form  13 and that it's argumentative. John, you can answer  14 if you understand.  15 THE WITNESS: Your question, I believe, was  16 that had I known previously that Mr. Pasman's dog  17 was dangerous, I would have had the dog removed. If  18 that is your question, yes, I -- well, yes.  19 BY MR. RALLIS:  20 Q Is there a mortgage on the property?  21 A No.  22 Q Do you know if there's any encumbrances on the  23 property?  24 A I do know and I don't think so.  25 Q After your purchase of the property in 2005, did you</p>	<p style="text-align: right;">Page 24</p> <p>1 the properties, there's a warehouse on that property and I've  2 been to that warehouse, I'm going to guess, three times a  3 year, four. As far as driving through the court, Ron and I  4 used to do that a couple of times a year. I've never done  5 that with our new manager, Mark. I guess that answers your  6 question, sir.  7 Q Since September 3rd of 2017, how many tenants have  8 had their dogs removed from the properties? Have you made  9 tenants remove dogs from the properties?  10 A I'm thinking at least three, maybe four.  11 Q And what kind of dogs were those, do you recall?  12 A To my knowledge, at least -- In each instance it was  13 a pit bull. I can think of three specifically.  14 MR. RALLIS: That's all I have for right now.  15 Thank you.  16 THE WITNESS: Thank you.  17 EXAMINATION  18 BY MR. ARNDT:  19 Q John, this is Mark. I've got just a couple of  20 follow-up questions for you. First of all, prior to the  21 incident that's the subject of this lawsuit, which I believe  22 took place on September 3rd, 2017, were you ever aware of Ron  23 Pasman having a dog that was causing any kind of a problem?  24 A No, and I was not even aware he had a dog.  25 Q And therefore also not aware that Mr. Pasman --</p>
<p style="text-align: right;">Page 23</p> <p>1 ever prepare or have any of the tenants sign any new lease  2 agreements with East Winds Court, Inc.?  3 A First of all, there was a mortgage on the property,  4 but there is no longer. Now to go to your question you just  5 asked, again, I'm not getting smart with you. You asked did  6 you, meaning me, did I do any leases with tenants. Not that I  7 can recall.  8 Q Did Mr. Galvin or any of your agents of East Winds  9 Court, Inc. ever have or ever prepare or ever have any of the  10 tenants sign any lease of anything as to those properties?  11 A Well, yeah, we -- yes.  12 Q So from the time that East Winds Court purchased the  13 property from D&amp;M Properties, it never had an agreement with  14 Jennifer Pinkelman until April 24th of 2018; is that correct?  15 A I don't know.  16 Q Well, I'm looking at the lease that we talked about  17 earlier, and I just want to make sure there wasn't any other  18 lease that there was between 1999 and 2018.  19 A I don't know that. I don't -- I don't even know if  20 Jennifer Pinkelman lived there.  21 Q When was the last time that you were -- how many  22 times since 2017 have you visited the property?  23 A Well, as I told you, I would guess maybe a half a  24 dozen times a year. In the last two or three years, I would  25 say it's maybe even less than that, but when you say visited</p>	<p style="text-align: right;">Page 25</p> <p>1 Mr. Pasman's dog had a history of biting people?  2 A That's true. In fact, I asked him and he told me  3 the dog had never bitten anyone.  4 Q Based upon your knowledge of the incidents and  5 realizing that you weren't an eyewitness to the incident, but  6 based upon your knowledge of Mr. Pasman's lot and the  7 sheriff's report, do you know or have an idea of where the  8 incident took place?  9 A Yes.  10 Q Where?  11 A On Mr. Pasman's lot.  12 Q The lot that he was leasing from East Winds?  13 A Yes.  14 Q In other words, it did not take place in a common  15 area?  16 A That's right.  17 MR. ARNDT: Okay. I think that's all the  18 questions I have for you, John. Kirk, anything  19 else?  20 MR. RALLIS: Just a couple follow-up on that  21 one.  22 EXAMINATION  23 BY MR. RALLIS:  24 Q But East Winds Court, which is owned by you, owns  25 that land that he leases from; is that correct?</p>

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1 A Yes.

2 Q I'm looking at the Ron Pasman lease of 2010. Did  
3 Ron Pasman give you or Mr. Galvin any notice of the dog being  
4 on the property prior to September 3rd, 2017?

5 A To my knowledge, Mr. Pasman -- Mr. Pasman never gave  
6 any ownership or managementship -- management of East Winds  
7 Court any knowledge that he had a dog there.

8 MR. RALLIS: Okay. Oh, I got the wrong one.  
9 Sorry. I'm playing with this thing. That's all.  
10 Thank you.

11 MR. ARNDT: Okay. John, this is Mark again.  
12 You've got a right to review your deposition  
13 transcript before it would become certified. I  
14 would recommend that you waive your right to do  
15 that. Are you okay with that?

16 THE WITNESS: Yes.

17 MR. ARNDT: Okay. Stacy, we'll waive.

18 (10:27 a.m.)  
19  
20  
21  
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23  
24  
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Page 27

1 CERTIFICATE

2 STATE OF SOUTH DAKOTA )

3 :SS

4 COUNTY OF MINNEHAHA )  
5

6 I, STACY L. WIEBESIEK, RPR, CSR, Notary Public in and  
7 for the State of South Dakota, do hereby certify that the  
8 deposition of JOHN PAUL BLACKBURN was by me reduced to machine  
9 shorthand in the presence of the witness, afterwards  
10 transcribed by me by means of computer, and that to the best  
11 of my ability the foregoing is a true and correct transcript  
12 of the deposition by the witness as aforesaid.

13 I further certify that this deposition was taken at  
14 the time and place specified in the foregoing caption.

15 I further certify that I am not a relative, counsel or  
16 attorney for any party, or otherwise interested in the outcome  
17 of this action.

18 IN WITNESS WHEREOF, I have hereunto set my hand at  
19 Sioux Falls, South Dakota, on the 29th day of April, 2020.  
20

21   
22

23 STACY L. WIEBESIEK, RPR, CSR  
24 NOTARY PUBLIC

25 My Commission expires December 21, 2025.

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**STATE OF SOUTH DAKOTA        }                      IN CIRCUIT COURT**

**COUNTY OF YANKTON             }                      FIRST JUDICIAL CIRCUIT**

TERESA BURGI, Individually, and  
TERESA BURGI, as Guardian Ad Litem  
for KALEB RAYMOND BURGI,

Plaintiff,  
vs. 66CIV19-000261

EAST WINDS COURT, INC.,

Defendant.

48.

RONALD PASMAN,

**Third-Party Defendant.**

Deposition of: TERESA BURGI  
Date: March 10, 2020  
Time: 1:27 p.m.

### APPEARANCES

Mr. David King  
King Law Firm  
Sioux Falls, South Dakota

Attorney for the Plaintiff

Mr. Mark J. Arndt  
Evans, Haigh & Hinton, LLP  
Sioux Falls, South Dakota

Attorney for the Defendant East Winds Court, Inc.

REPORTED BY: Audrey M. Barbush, RPR

## STIPULATION

2 It is hereby stipulated and agreed by and between the  
3 above-named parties through their attorneys of record, whose  
4 appearances have been hereinabove noted, that the deposition  
5 of TERESA BURG1 may be taken at this time and place, that  
6 is, at the offices of King Law Firm, 141 North Main Avenue,  
7 Suite 700, Sioux Falls, South Dakota, on the 10th day of  
8 March, 2020, commencing at the hour of 1:27 p.m.; said  
9 deposition taken before Audrey M. Barbush, a Registered  
10 Professional Reporter and Notary Public within and for the  
11 State of South Dakota; said deposition taken for the purpose  
12 of discovery or for use at trial or for each of said  
13 purposes; and said deposition taken in accordance with the  
14 applicable Rules of Civil Procedure as if taken pursuant to  
15 written notice. Objections, except as to the form of the  
16 question, are reserved until the time of trial. Insofar as  
17 counsel are concerned, the reading and signing of the  
18 transcript by the witness is waived.

-000-

TERESA BURGL.

called as a witness, having been first duly sworn,  
testified as follows:

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## EXAMINATION

2 BY MR. ARNDT:

3 Q Ms. Burgi, my name is Mark Amendt, as I introduced  
4 myself just a minute ago. I represent the defendant  
5 that you sued in this lawsuit, East Winds Court, Inc.;  
6 and I'm here today for the purpose of taking your  
7 deposition in the lawsuit that you started on behalf of  
8 your son Kaleb, K-a-l-e-b.

9 Do you understand that's the purpose of why we're  
10 here today?

11 A Yes.

12 Q I'm sure David has talked to you about what's going to  
13 happen here today or some of what happens at a  
14 deposition. I'd like to maybe cover just a couple  
15 ground rules so I can be as efficient with you as  
16 possible.

17 MR. KING: Mark, can I interrupt just for a  
18 second?

19 MR. ARNDT: Sure.

20 MR. KING: I don't mean to interrupt your flow,  
21 but did we -- did you give Pasman notice of this?

22 MR. ARNDT: I'd have to look and see, David.

23 MR. KING: I'm just wondering because I don't want  
24 to have to...

25 MR. ARNDT: You don't want to have to what?

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<p>1 MR. KING: I don't want to have to get together 2 again, you know. I mean, I'm sure you did give him 3 notice. I'm just -- 4 MR. ARNDT: I don't see it here, David. So I'm 5 not sure if Mr. Pasman received notice or not. I 6 should say I do know I don't think he filed an Answer 7 to the Complaint. So... 8 MR. KING: To your knowledge, he's still pro se? 9 MR. ARNDT: To my knowledge, he is. 10 MR. KING: Okay. 11 BY MR. ARNDT: 12 Q Again, Teresa, for purposes of today's deposition if 13 you and I could avoid talking at the same time, I would 14 appreciate that. I'll try to allow you sufficient time 15 to give an answer to my question; and if you can let me 16 finish my question before you start to give your 17 answer, I'd appreciate that. Okay? 18 A Okay. 19 Q Also, if at any point you don't understand a question 20 that I'm asking, please let me know that. And if you 21 give an answer to one of my questions, I'm going to 22 assume that you understood the question. Is that okay? 23 A Yep. 24 Q I'm going to start just from a format standpoint, 25 Teresa, with some information about you and Kaleb, just</p>	<p>1 the address you gave me? 2 A Yes. 3 Q Who do you live with? 4 A Kaleb, my son Hunter and my son Carson. 5 Q How old are Hunter and Carson? 6 A Hunter is 19 and Carson is 18. 7 Q Have Hunter and Carson both lived with you the entire 8 time you've lived at the address you just gave me? 9 A Yes. 10 Q So Kaleb would be your youngest son? 11 A Yes. 12 Q How old is Kaleb now? 13 A 15. 14 Q Are all of your boys in school? 15 A No. 16 Q What is Hunter doing now? 17 A He's at home right now. 18 Q Not in school? 19 A No. He graduated. 20 Q Graduated from high school? 21 A Last year. Yep. 22 Q Was that Yankton High School? 23 A Yes. 24 Q Is he working anywhere? 25 A No.</p>
Page 6	Page 8
<p>1 kind of some -- a social history for the two of you; 2 and then we'll move more into the facts of the incident 3 that's the subject matter of this lawsuit, the date 4 that Kaleb was bitten by the dog at the trailer park. 5 Okay? 6 A Okay. 7 Q How old are you, Teresa? 8 A 41. 9 Q Is it okay if I call you Teresa? 10 A Yes. 11 Q Where do you currently live? 12 A 1300 Meadow View Road in Yankton, South Dakota. 13 Q Is that the address that's at the East Winds Court? 14 A Yes. 15 Q How long have you lived there? 16 A 15-plus years. 17 Q Have you always lived at that same address at the 18 trailer court, or more than one? 19 A No. I lived on Belair Road. 20 Q That was also at the same trailer court? 21 A Yes. 22 Q Has Kaleb always lived at the street address that you 23 just gave me? 24 A Yes. 25 Q He would have been born after you would have moved to</p>	<p>1 Q How about Carson? Where is he? 2 A He goes to Yankton High School, but he's doing online 3 classes. So... 4 Q So he doesn't actually go to school. He just takes 5 classes online -- 6 A Yes. 7 Q -- attempting to obtain his high school degree. 8 A Yes. He will graduate next year. 9 Q Does Carson work anywhere? 10 A No. 11 Q And Kaleb still lives with you at home? 12 A Yes. 13 Q Are Hunter and Carson's name also Burgi? 14 A Yes. 15 Q Who is Kaleb's father? 16 A Chad Burgi. 17 Q Is Chad Burgi also the father of Hunter and Carson? 18 A Yes. 19 Q Does Kaleb have any contact with Chad Burgi? 20 A No. 21 Q He doesn't have any visitation rights or anything like 22 that? 23 A He does but does not see them. 24 Q Do you have other family that lives in the trailer 25 park?</p>

Page 9	Page 11
<p>1 A No.</p> <p>2 Q Did you at one time?</p> <p>3 A Yes.</p> <p>4 Q Who were they?</p> <p>5 A My mom and my sister.</p> <p>6 Q What are their names?</p> <p>7 A Cynthia Pinkelman, Jennifer Pinkelman.</p> <p>8 Q Did they live at the trailer court at the time of this</p> <p>9 incident in 2017?</p> <p>10 A No.</p> <p>11 Q When is the last time that they had lived at the</p> <p>12 trailer court?</p> <p>13 A I would not know for sure, but I think it was</p> <p>14 probably -- before the incident, probably five years.</p> <p>15 Q I appreciate that you may not be exact on some dates</p> <p>16 but --</p> <p>17 A Yeah.</p> <p>18 Q Just let me know if you can't answer a question</p> <p>19 exactly, and I might ask you for an approximation.</p> <p>20 A Okay.</p> <p>21 Q How about any neighbors in the area? Do you have close</p> <p>22 friends that might be neighbors in the trailer court?</p> <p>23 A No.</p> <p>24 Q Do you know any of your neighbors in the trailer court?</p> <p>25 A Yes.</p>	<p>1 A Yes.</p> <p>2 Q Can you kind of tell me what your career or occupations</p> <p>3 have been since you graduated from high school? Maybe</p> <p>4 just take me through that, up until today.</p> <p>5 A Fast food work first, and then I was a CNA. I got</p> <p>6 certified to be a CNA, so -- and then Walmart, which</p> <p>7 you'd call retail. So...</p> <p>8 Q Do you work as a CNA any longer?</p> <p>9 A No.</p> <p>10 Q What period of time were you doing that?</p> <p>11 A Approximately five years I was doing it.</p> <p>12 Q Do you know what years those would have been?</p> <p>13 A 1999 to probably 2002.</p> <p>14 Q Where would you have done that?</p> <p>15 A In Mitchell, South Dakota.</p> <p>16 Q Who was your employer?</p> <p>17 A At the time it was called Brady Health Care or</p> <p>18 whatever. It was a nursing home.</p> <p>19 Q Why did you stop doing that type of work?</p> <p>20 A Pregnant with Carson and was having difficulties, so...</p> <p>21 Q And then your next job or career would have been at</p> <p>22 Walmart?</p> <p>23 A Yes.</p> <p>24 Q When did you work at Walmart?</p> <p>25 A I can't recall, I guess.</p>
Page 10	Page 12
<p>1 Q I think at one point I read that perhaps there was a</p> <p>2 neighbor across the street that spent some time</p> <p>3 watching Kaleb from time to time?</p> <p>4 A Yes. She doesn't live there anymore.</p> <p>5 Q What's that person's name?</p> <p>6 A Brenda Thompson.</p> <p>7 Q Did Ms. Thompson live at the trailer court in 2017?</p> <p>8 A Yes.</p> <p>9 Q At the time of the incident she was living there?</p> <p>10 A Yes.</p> <p>11 Q But other than that, you really don't socialize with</p> <p>12 anybody in the trailer court?</p> <p>13 A No.</p> <p>14 Q What's your highest level of education, Teresa?</p> <p>15 A 12th grade.</p> <p>16 Q You have a high school degree?</p> <p>17 A Yes, I do.</p> <p>18 Q Where is that from?</p> <p>19 A Wynot Public School, Wynot, Nebraska.</p> <p>20 Q What year was that?</p> <p>21 A 1996.</p> <p>22 Q You did not go on to any higher level of education?</p> <p>23 A No.</p> <p>24 Q Did you start working after you graduated from high</p> <p>25 school?</p>	<p>1 Q Do you currently work at Walmart?</p> <p>2 A No.</p> <p>3 Q When you were working at Walmart, was that in Yankton?</p> <p>4 A Yes.</p> <p>5 Q When did you move to Yankton?</p> <p>6 A When I was 18. And then -- if you want me to explain.</p> <p>7 Q Yeah, please.</p> <p>8 A And then when I got married, I moved to Mitchell; and</p> <p>9 then we moved back to Yankton when I was pregnant with</p> <p>10 Carson, so -- because I was having complications, so...</p> <p>11 Q Sure. Would that have been approximately 2002?</p> <p>12 A Yes. Yep.</p> <p>13 Q And you don't know when you would have started at</p> <p>14 Walmart?</p> <p>15 A Give or take, probably after Carson.</p> <p>16 Q So if Carson is 18, he would have been born around 2002</p> <p>17 or 2003. Would you have started at Walmart shortly</p> <p>18 after that?</p> <p>19 A I would say so, yeah.</p> <p>20 Q How long did you work there?</p> <p>21 A Until -- I'm guessing. I think it was after Kaleb was</p> <p>22 born. So...</p> <p>23 Q So maybe three years or so?</p> <p>24 A Yeah.</p> <p>25 Q Have you worked at all since Kaleb was born?</p>

Page 13	Page 15
<p>1 A Yes.</p> <p>2 Q Where have you worked?</p> <p>3 A At Arby's in Yankton.</p> <p>4 Q Do you still work there?</p> <p>5 A No.</p> <p>6 Q When did you work at Arby's?</p> <p>7 A I know I worked there five years, so -- probably 2005 I</p> <p>8 started. So...</p> <p>9 Q Did you work anywhere after you were done working at</p> <p>10 Arby's?</p> <p>11 A No.</p> <p>12 Q And you're not working now.</p> <p>13 A No.</p> <p>14 Q So from approximately 2010 until today you haven't</p> <p>15 worked?</p> <p>16 A No.</p> <p>17 Q Is there any reason that you haven't worked during that</p> <p>18 roughly 10-year period of time?</p> <p>19 A Because of the kids' disabilities, was the main reason;</p> <p>20 and then now I have rheumatoid arthritis, and so it's</p> <p>21 hard.</p> <p>22 Q I'm aware that Kaleb has been diagnosed with autism.</p> <p>23 And I am going to ask you some questions about that in</p> <p>24 a bit. But you referenced "kids'" disabilities. Do</p> <p>25 either of your other boys have disabilities?</p>	<p>1 think I've heard of referring to autism on a spectrum</p> <p>2 or a scale?</p> <p>3 A Yeah. I'm not aware -- I can't remember what his was.</p> <p>4 So...</p> <p>5 Q Do you know if it's on the more severe or the less</p> <p>6 severe side of the autism scale?</p> <p>7 A On the more severe, I know that.</p> <p>8 Q How about Kaleb's ability to function? Let's say</p> <p>9 before the incident in 2017, if someone was asking you</p> <p>10 what is Kaleb able to do as a 12-year-old, and maybe</p> <p>11 even compare it to what you would expect a normal</p> <p>12 12-year-old's abilities to be, can you give a</p> <p>13 description of what Kaleb's abilities were at that</p> <p>14 time?</p> <p>15 A Not a lot. He has to be reminded and told how to,</p> <p>16 like, dress, and help have his -- how to, like,</p> <p>17 understand words. Like, some words will come at him,</p> <p>18 and I have to explain what they mean. So his logical</p> <p>19 thinking is not there.</p> <p>20 Q Physically, does Kaleb appear to have the physical</p> <p>21 abilities that a normal 12-year-old boy would have?</p> <p>22 A I would say so, I guess.</p> <p>23 Q Academically, how was Kaleb performing in school before</p> <p>24 this incident in September of 2017?</p> <p>25 A They have him in special education classes because he</p>
Page 14	Page 16
<p>1 A Oh, yes.</p> <p>2 Q What are they?</p> <p>3 A Hunter is autistic, too, and cognitively impaired. And</p> <p>4 Carson has a heart condition; and he's got severe</p> <p>5 asthma, and he has stomach issues.</p> <p>6 Q So mainly, on a day-to-day basis, your time is spent</p> <p>7 caring for your boys?</p> <p>8 A Yes.</p> <p>9 Q My understanding is that Kaleb was 12 at the time of</p> <p>10 this incident in 2017?</p> <p>11 A Yes.</p> <p>12 Q And at that time Kaleb had already been diagnosed as</p> <p>13 autistic?</p> <p>14 A Yes.</p> <p>15 Q My understanding is there's somewhat of a scale for</p> <p>16 autism or autism can be a diagnosis that's a matter of</p> <p>17 degree. Is that correct?</p> <p>18 A Yes.</p> <p>19 Q Is there any way that you can describe for me the</p> <p>20 degree of autism that Kaleb has?</p> <p>21 A I guess, from my standpoint, he can't do a lot. He's</p> <p>22 very smart, but he doesn't do a lot. Like, I have to</p> <p>23 literally -- he doesn't understand everything, like,</p> <p>24 when people are talking to him. So...</p> <p>25 Q Is there any type of a medical diagnosis or a -- I</p>	<p>1 performs at very low to what his age is, so...</p> <p>2 Q How was he doing in those special education classes</p> <p>3 prior to the incident?</p> <p>4 A It was still difficult for him.</p> <p>5 Q How about after this incident in 2017, academically?</p> <p>6 Did the incident cause any change in Kaleb's ability to</p> <p>7 progress academically?</p> <p>8 A Yes.</p> <p>9 Q What change did you see?</p> <p>10 A His brain -- he doesn't function right. He can't</p> <p>11 hardly talk. I mean, it's -- yeah. It's been a long</p> <p>12 process. So...</p> <p>13 Q Sure. As long as I'm on that topic, is there -- in an</p> <p>14 effort to be thorough, because, Teresa, this is my</p> <p>15 opportunity to ask you these questions, so --</p> <p>16 A I understand.</p> <p>17 Q I'm not attempting to badger you with any of these</p> <p>18 questions, but in an effort to be thorough, is there</p> <p>19 another way that you can describe how Kaleb functioned</p> <p>20 before the incident versus after the incident?</p> <p>21 A Before the incident, he wasn't as emotional, and I</p> <p>22 thought he could think a little bit, you know, and kind</p> <p>23 of know meanings of words.</p> <p>24 But after the incident, he has nightmares, and he</p> <p>25 can barely get through the night without peeing; and he</p>

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<p>1 never did that before. And then he just -- his logical 2 thinking's not there. So...</p> <p>3 Q Do you attribute that to anything in particular?</p> <p>4 A Well, he has a shunt in his head because he has 5 hydrocephalus, so -- I don't know. If it's -- he hit 6 the back of his head so hard? I don't...</p> <p>7 Q Have any of the medical doctors given you opinions 8 about that shunt?</p> <p>9 A Yes. They said -- he has seizures now, so he's on 10 seizure meds and stuff like that. So...</p> <p>11 Q He did not have seizures prior to the incident?</p> <p>12 A No. No.</p> <p>13 Q And the medical doctors believe that the seizures are 14 attributable to the incident?</p> <p>15 A That's what his neurologist would say, yeah.</p> <p>16 Q And specifically that the incident with the dog caused 17 the shunt to move?</p> <p>18 A Yeah.</p> <p>19 Q Does the medication control the seizures?</p> <p>20 A Yes, it helps it. I mean, it doesn't totally control 21 it, but it will help it.</p> <p>22 Q How often since the incident does Kaleb have seizures?</p> <p>23 A Maybe every couple weeks he'll have one.</p> <p>24 Q When that happens, how long do they last?</p> <p>25 A A few -- like a minute.</p>	<p>1 like that. So...</p> <p>2 Q How often will that happen?</p> <p>3 A That's happened about two or three times a week. So...</p> <p>4 Q My understanding is that Kaleb is seeing a counselor.</p> <p>5 A Yes.</p> <p>6 Q Did he do that prior to the incident?</p> <p>7 A Yes.</p> <p>8 Q And he's just continuing to do that after the incident?</p> <p>9 A Yes.</p> <p>10 Q How often does Kaleb see a counselor?</p> <p>11 A Once a week.</p> <p>12 Q Has the counselor given you information about any 13 effect upon Kaleb of the dog incident?</p> <p>14 A Yeah. They're working on his PTSD, trying to help 15 control his different, like, anger or crying or 16 something like that. It goes along with PTSD.</p> <p>17 Q Is that improving?</p> <p>18 A It has its days. You think it does, and then all of a 19 sudden it goes backwards. So...</p> <p>20 Q How about from a prognosis perspective? And let's 21 start with the counseling. Has anyone given you any 22 advice or given you a prognosis of how Kaleb is doing 23 mentally or emotionally as he continues to go through 24 his counseling?</p> <p>25 A Not really, no.</p>
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<p>1 Q You referenced that Kaleb is not able to make it 2 through the night since the incident without peeing. 3 Are you talking about getting up and going to the 4 restroom or wetting his bed?</p> <p>5 A He's wetting. He's wet a lot since the accident, so -- 6 and he never did that before, so...</p> <p>7 Q Sure. When you say "a lot," how often?</p> <p>8 A I'd give it two or three times a week.</p> <p>9 Q And that's still occurring?</p> <p>10 A Yes.</p> <p>11 Q Again, in an effort to be thorough, is there any other 12 way you would want -- anything you would want a jury to 13 know or any way you could describe the effect of the 14 incident on Kaleb? And I guess I should qualify that, 15 Teresa, with, I can look at his medical records --</p> <p>16 A Yeah.</p> <p>17 Q -- and we can see that. I'm not trying to make you a 18 doctor.</p> <p>19 But just from your observations of Kaleb day to 20 day, are there any other symptoms or anything -- any 21 behavioral issues that you've noticed that weren't 22 present before the incident that are present now?</p> <p>23 A Yeah. When he has nightmares, then when he gets up in 24 the morning, he can't function. Like, you just -- you 25 just don't -- he doesn't know where he's at or -- stuff</p>	<p>1 Q Anything about what to expect next or --</p> <p>2 A Yeah. The psychiatrist, the doctor, she said that you 3 just have to go day to day with this PTSD because you 4 just never know what can trigger it. So...</p> <p>5 Q And then how about medically? Have you received 6 recommendations from doctors about any additional 7 medical treatment?</p> <p>8 A Just what I'm doing.</p> <p>9 Q And what's that?</p> <p>10 A He sees his psychiatrist every three months. He's in 11 therapy once a week with Mary. And just go to his 12 doctors appointments. And he sees his neurologist 13 every three to six months. So...</p> <p>14 Q The appointments with the neurologist, is that mainly 15 to help control the seizures?</p> <p>16 A Yeah. Has him on medicine for that. So...</p> <p>17 Q Other than those steps, do you currently have any plans 18 for additional medical treatment for Kaleb that you 19 relate to the dog bite incident?</p> <p>20 A No.</p> <p>21 Q When was the last time -- other than the neurologist 22 and the psychiatrist, when was the last treatment that 23 Kaleb had for medical issues after the incident?</p> <p>24 A After the incident, he's had all the treatments. So...</p> <p>25 Q I guess part of what I'm getting at is I understand</p>

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<p>1 that Kaleb had some surgeries after the incident.</p> <p>2 A Yes.</p> <p>3 Q Do you know how many he had?</p> <p>4 A Eight or nine. Approximate.</p> <p>5 Q Were those all plastic surgeries?</p> <p>6 A Yes.</p> <p>7 Q When is the last time he had a plastic surgery?</p> <p>8 A I would say 2019. Approximately August 2019.</p> <p>9 Q Sure. And, again, we can look at the records.</p> <p>10 A Yeah.</p> <p>11 Q I'm not trying to trick you with dates.</p> <p>12 A Okay.</p> <p>13 Q Do you anticipate Kaleb would need additional plastic</p> <p>14 surgery?</p> <p>15 A Not unless -- he told me -- that doctor told me not</p> <p>16 unless his face would, like, open up or something.</p> <p>17 Q So at this point you don't have any plans for future</p> <p>18 plastic surgery treatment.</p> <p>19 A No. He's --</p> <p>20 Q And generally, as far as Kaleb's care, ongoing care,</p> <p>21 you anticipate he would continue to see his counselor?</p> <p>22 A Uh-huh.</p> <p>23 Q And that's a lady named Mary?</p> <p>24 A Uh-huh.</p> <p>25 Q And then also a psychiatrist?</p>	<p>1 incident, correct?</p> <p>2 A Yes.</p> <p>3 Q Has that program changed since the incident?</p> <p>4 A Yeah, a little. I guess, they said.</p> <p>5 Q Can you tell me how it's changed?</p> <p>6 A They have to approach him differently because of, like,</p> <p>7 they never know what mood he's going to be, so -- like</p> <p>8 if he doesn't want to do anything, they're not forcing</p> <p>9 him to do it.</p> <p>10 Q Is there anyone in particular, for instance, at the</p> <p>11 school, a special education teacher or coordinator that</p> <p>12 could articulate the difference in Kaleb before the</p> <p>13 incident and after the incident?</p> <p>14 A It's kind of hard because he was in middle school and</p> <p>15 now this year he's in -- so I don't know if you want a</p> <p>16 middle school one. Because after the dog bite, he was</p> <p>17 in middle school --</p> <p>18 Q Sure.</p> <p>19 A -- and then he switched over to high school.</p> <p>20 Q If you know, as you're sitting here today, is there a</p> <p>21 name of someone at the middle school that was mostly in</p> <p>22 charge of Kaleb's plan?</p> <p>23 A Yes. Ms. Johnson.</p> <p>24 Q And she would be at a middle school in Yankton?</p> <p>25 A Yes.</p>
Page 22	Page 24
<p>1 A Yes.</p> <p>2 Q And then also a neurologist?</p> <p>3 A Yep.</p> <p>4 Q Does that cover all of the future treatment that you're</p> <p>5 aware of?</p> <p>6 A And then a heart doctor, so -- but...</p> <p>7 Q Is the heart doctor at all related to the dog bite</p> <p>8 incident?</p> <p>9 A At this time, I don't know. I --</p> <p>10 Q Did Kaleb have a heart condition prior to the dog bite</p> <p>11 incident?</p> <p>12 A They say he didn't, but like I said, at this time I</p> <p>13 really don't know.</p> <p>14 Q Are you aware of what type of treatment he would</p> <p>15 receive from the heart doctor or what his heart</p> <p>16 condition is?</p> <p>17 A His left ventricle is swollen. So whatever, I don't</p> <p>18 know, medical term they call that.</p> <p>19 Q My understanding is that Kaleb is on an independent</p> <p>20 education program at school. And I know you told me he</p> <p>21 was in a special needs or special resources class?</p> <p>22 A Yes.</p> <p>23 Q Is that part of that independent education program?</p> <p>24 A Yes.</p> <p>25 Q And Kaleb was on that type of a program prior to the</p>	<p>1 Q What is the name of that school?</p> <p>2 A Yankton Middle School.</p> <p>3 Q And then now he's in a high school --</p> <p>4 A Yes.</p> <p>5 Q -- independent education program?</p> <p>6 A Yes. And his teacher there is Ms. Robin Taylor, would</p> <p>7 be the main one.</p> <p>8 Q Is Kaleb's education going okay now, from your</p> <p>9 perspective, or is there anything, again, you would</p> <p>10 want a jury to know about Kaleb's progress</p> <p>11 educationally?</p> <p>12 A No. I think it's okay.</p> <p>13 Q I'm going to switch gears a little bit. And by the</p> <p>14 way, if at any point you want to take a break, just let</p> <p>15 me know that.</p> <p>16 A That's fine.</p> <p>17 Q This can be relatively informal. And I don't think</p> <p>18 we'll be here for terribly long, but --</p> <p>19 A Okay.</p> <p>20 Q -- just let me know if you want to take a break.</p> <p>21 A That's fine.</p> <p>22 Q I want to ask you about the date of the incident itself</p> <p>23 and maybe, just so I can try to be efficient, start</p> <p>24 with you describing what you know about the incident or</p> <p>25 maybe how you were informed of the incident and what</p>

Page 25	Page 27
<p>1 knowledge you have of the incident.</p> <p>2 A Okay. That day my neighbor Brenda was watching him</p> <p>3 because he was playing with her grandkids. They</p> <p>4 decided to go up to Ron Pasman's house where his</p> <p>5 grandkids were playing basketball. And I was in the</p> <p>6 house, and all of a sudden Brenda said that Kaleb had</p> <p>7 gotten bitten by a dog. And then I freaked out from</p> <p>8 there. So...</p> <p>9 Q So you were informed of the incident by Brenda?</p> <p>10 A Yes.</p> <p>11 Q Did she, like, come over to your house?</p> <p>12 A Yes.</p> <p>13 Q Had you seen Kaleb at that point?</p> <p>14 A Yes, and his whole bottom lip was off his face.</p> <p>15 Q Was Kaleb with Brenda?</p> <p>16 A Yes. Brenda was right, like, probably, I'd say 20,</p> <p>17 25 feet away.</p> <p>18 Q So had Kaleb come back to your house on his own?</p> <p>19 A Yeah, he tried. And then Brenda caught him and walked</p> <p>20 him to my...</p> <p>21 Q And when you observed Kaleb, I think you gave me the</p> <p>22 description that some of his bottom lip was missing?</p> <p>23 A It was, like, hanging. Both sides were down, and the</p> <p>24 lip was just hanging. So...</p> <p>25 Q I imagine there was a fair amount of blood.</p>	<p>1 back to your house?</p> <p>2 A (Nods head.)</p> <p>3 Q Yes?</p> <p>4 A Yes, I'm sorry. Yes.</p> <p>5 Q No problem. I'll remind you if I need an oral answer.</p> <p>6 A Okay.</p> <p>7 Q You mentioned Ms. Thompson had some grandkids at her</p> <p>8 house that morning --</p> <p>9 A Yes.</p> <p>10 Q -- or that day?</p> <p>11 A Yes,</p> <p>12 Q By the way, what time of day did this occur? Do you</p> <p>13 know?</p> <p>14 A If I remember right, about 11:00.</p> <p>15 Q 11:00 a.m.?</p> <p>16 A Yeah.</p> <p>17 Q Late morning?</p> <p>18 A Yes.</p> <p>19 Q Was it a school day?</p> <p>20 A No. It was Labor Day weekend.</p> <p>21 Q Do you know if Ms. Thompson's grandchildren witnessed</p> <p>22 the incident?</p> <p>23 A Yes.</p> <p>24 Q What are their names?</p> <p>25 A I can't remember which ones were there. There's a</p>
Page 26	Page 28
<p>1 A Yes. So...</p> <p>2 Q What was Kaleb's reaction at that time? Was he crying?</p> <p>3 Was he --</p> <p>4 A He was crying, and then he went into, like, a complete</p> <p>5 shock stare. So...</p> <p>6 Q Did Ms. Thompson witness the dog bite?</p> <p>7 A No.</p> <p>8 Q If we needed to reach Ms. Thompson somehow, do you know</p> <p>9 how we would do that?</p> <p>10 A Yes.</p> <p>11 Q Do you have contact information for her?</p> <p>12 A Oh, yeah. Phone number, yeah.</p> <p>13 Q Can you give that to me?</p> <p>14 A I don't remember it. I think it's -- right offhand,</p> <p>15 sorry.</p> <p>16 MR. KING: I'll get it from her, and I'll send it</p> <p>17 to you.</p> <p>18 THE WITNESS: Yeah, he has it. So...</p> <p>19 BY MR. ARNDT:</p> <p>20 Q Okay. Do you know where she lives now?</p> <p>21 A Yes. In Yankton, at another trailer court.</p> <p>22 Q But, to your knowledge, she didn't actually witness the</p> <p>23 dog bite, correct?</p> <p>24 A Correct. To my knowledge.</p> <p>25 Q She simply would have observed Kaleb as he was coming</p>	<p>1 Gracie and -- oh, I can't -- I can't remember the other</p> <p>2 one that was there. Because she has four or five.</p> <p>3 So...</p> <p>4 Q Okay. Do you know, did Ms. Thompson's grandchildren go</p> <p>5 with Kaleb to Mr. Pasman's house?</p> <p>6 A From my knowledge of what Brenda told me, they were all</p> <p>7 walking up there, Kaleb already was up there, and she</p> <p>8 was watching them go up there; and then all of a sudden</p> <p>9 the grandkids were coming back and screaming that Kaleb</p> <p>10 got bit. So that's to my knowledge.</p> <p>11 Q So you wouldn't know if those grandkids would have</p> <p>12 witnessed the incident?</p> <p>13 A Yeah, no. Sorry.</p> <p>14 Q And you don't know if the grandkids were actually even</p> <p>15 on the Pasman property?</p> <p>16 A I wouldn't know that. Sorry.</p> <p>17 MR. KING: When we say "the Pasman property," do</p> <p>18 you mean the portion of the trailer park that his</p> <p>19 trailer was on?</p> <p>20 MR. ARNDT: Yeah, the lot that his trailer's on.</p> <p>21 THE WITNESS: Yeah.</p> <p>22 BY MR. ARNDT:</p> <p>23 Q Are you aware of any other witnesses to the incident?</p> <p>24 A I know the neighbors seen it, but -- Ron's neighbors</p> <p>25 seen it, but...</p>

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<p>1 Q Do you know what their names are?</p> <p>2 A I don't know. I don't have contact with anybody.</p> <p>3 Q How do you know that those neighbors would have</p> <p>4 witnessed the incident?</p> <p>5 A I'm -- to my knowledge, I'm just getting anything from</p> <p>6 what Brenda told me. So...</p> <p>7 Q So Brenda related to you that she thinks the neighbors</p> <p>8 would have witnessed it?</p> <p>9 A She said that she talked to the neighbors. So...</p> <p>10 Q But you don't know which neighbors?</p> <p>11 A Yeah, I wouldn't know. I'm sorry.</p> <p>12 Q That's okay. Again, keep in mind part of what the</p> <p>13 questions I'm asking is in an effort to be thorough.</p> <p>14 So --</p> <p>15 A I understand.</p> <p>16 Q -- I understand you might not have all the answers.</p> <p>17 My understanding is that Mr. Pasman's</p> <p>18 grandchildren were at or near his trailer house playing</p> <p>19 basketball at the time of the incident. Does that</p> <p>20 square with your understanding?</p> <p>21 A That is what every kid that was there told me, that</p> <p>22 they were playing basketball.</p> <p>23 Q My understanding is that it was two of Mr. Pasman's</p> <p>24 grandchildren.</p> <p>25 A Uh-huh.</p>	<p>1 knowledge of whether Mr. Pasman owned a dog or was</p> <p>2 keeping a dog at his trailer house prior to this</p> <p>3 incident?</p> <p>4 A I do not know.</p> <p>5 Q Do you have any information that has indicated to you</p> <p>6 that the dog that bit Kaleb had any prior tendencies of</p> <p>7 being vicious or biting somebody?</p> <p>8 A No.</p> <p>9 Q Have you talked to anybody since the incident that was</p> <p>10 aware that Mr. Pasman was keeping a dog on his</p> <p>11 property?</p> <p>12 A Not that I recall.</p> <p>13 Q You haven't talked to any neighbors who said, "Oh,</p> <p>14 yeah, I knew he had a dog there"?</p> <p>15 A The ones that I have talked to said they didn't even</p> <p>16 know he had a dog. So...</p> <p>17 Q My understanding is that there were two "Beware of Dog"</p> <p>18 signs posted at Mr. Pasman's property. Were you aware</p> <p>19 of those?</p> <p>20 A No.</p> <p>21 Q As you sit here today, do you know if that's true or</p> <p>22 not true?</p> <p>23 A I don't -- I never seen them. So...</p> <p>24 Q I guess, as a follow-up to that, do you think you would</p> <p>25 have had an opportunity to see them? I mean, would you</p>
Page 30	Page 32
<p>1 Q Is that your understanding as well?</p> <p>2 A Yes.</p> <p>3 Q And presumably those two would have witnessed or had</p> <p>4 the opportunity to witness the incident.</p> <p>5 A Yes.</p> <p>6 Q You haven't talked to them about it?</p> <p>7 A No.</p> <p>8 Q How about Mr. Pasman himself? Have you talked to</p> <p>9 Mr. Pasman?</p> <p>10 A No, I have not.</p> <p>11 Q Prior to the date of the incident, were you aware that</p> <p>12 Mr. Pasman had a dog?</p> <p>13 A No.</p> <p>14 Q You had never seen a dog on Mr. Pasman's property?</p> <p>15 A No.</p> <p>16 Q Ms. Burgi, I'm going to ask you to keep your eyes</p> <p>17 focused on me. I know Mr. King's making some notes --</p> <p>18 A Yeah.</p> <p>19 Q -- and setting a notepad down. I would prefer that you</p> <p>20 not view that as you're answering my questions. Okay?</p> <p>21 A Okay.</p> <p>22 MR. KING: I'm making unrelated notes.</p> <p>23 Go ahead.</p> <p>24 BY MR. ARNDT:</p> <p>25 Q Are you aware of whether or not East Winds Court had</p>	<p>1 be walking around the trailer court and maybe would</p> <p>2 have observed them, or how often would you go by there?</p> <p>3 A I would walk up to the mailbox, which is about 10 feet</p> <p>4 from his house; so I would have seen that.</p> <p>5 Q Do you know if Kaleb had any knowledge of whether or</p> <p>6 not a dog was being kept on the Pasman property prior</p> <p>7 to the incident?</p> <p>8 A To my knowledge, no.</p> <p>9 Q Kaleb had never mentioned a dog to you?</p> <p>10 A Nope.</p> <p>11 Q My understanding is that at the time of the incident</p> <p>12 the dog was tied to a leash that was tied to something</p> <p>13 on Mr. Pasman's trailer home. Is that your</p> <p>14 understanding, or do you know?</p> <p>15 A I don't know.</p> <p>16 Q My understanding is that the incident itself in which</p> <p>17 the dog had bitten Kaleb occurred on the lot that</p> <p>18 Mr. Pasman was leasing from East Winds. Is that your</p> <p>19 understanding as well?</p> <p>20 A Yes.</p> <p>21 Q It didn't happen on the street or anything like that?</p> <p>22 A Not to my knowledge.</p> <p>23 Q Do you know if Kaleb had prior interactions with</p> <p>24 Mr. Pasman's grandchildren?</p> <p>25 A Yes.</p>



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<p>1 Q What's your understanding of that?</p> <p>2 A They liked playing with Kaleb. They would come down</p> <p>3 with their bikes and ask him to play some days, and</p> <p>4 then some days he'd go up there, so -- it wasn't the</p> <p>5 first time he was up there. So...</p> <p>6 Q What were the names of those children? Do you know?</p> <p>7 A Elijah, and I don't know the other one.</p> <p>8 Q Had those two children, Mr. Pasman's grandchildren, for</p> <p>9 instance, ever been in your home?</p> <p>10 A No. But on my lot, yeah.</p> <p>11 Q How often -- I'm trying to get a sense of what the</p> <p>12 relationship that Kaleb had with those two kids.</p> <p>13 A Well, my -- I guess I want everybody to understand,</p> <p>14 it's in a trailer court, and all the kids were always</p> <p>15 together. So, like, you know, summertime, nice days,</p> <p>16 it's like a community there.</p> <p>17 Q Sure.</p> <p>18 A And we're all -- all the kids would join together at</p> <p>19 somebody's house and play outside. So...</p> <p>20 Q That makes sense. In particular to some of those kids,</p> <p>21 did Kaleb, for instance, have a best friend or maybe a</p> <p>22 few friends?</p> <p>23 A Yes.</p> <p>24 Q Who were they?</p> <p>25 A Brenda Thompson's grandkids.</p>	<p>1 Kaleb?</p> <p>2 A A pit bull.</p> <p>3 Q How do you know that?</p> <p>4 A The hospital told me when the sheriff's office came up</p> <p>5 there to interview me after he got bit.</p> <p>6 Q So you presume the sheriff told somebody at the</p> <p>7 hospital who told you that the dog was a pit bull?</p> <p>8 A Well, he told me at the hospital, I'm sorry. The</p> <p>9 sheriff's deputy told me at the hospital.</p> <p>10 Q Do you know if Kaleb had been invited onto the Pasman</p> <p>11 lot prior to him arriving there?</p> <p>12 A I don't know.</p> <p>13 Q Do you know if Kaleb had ever been asked not to go onto</p> <p>14 the Pasman lot by either the grandchildren or</p> <p>15 Mr. Pasman?</p> <p>16 A Not that I'm aware.</p> <p>17 Q My understanding is the dog's name is Marco, M-a-r-c-o.</p> <p>18 A Yeah.</p> <p>19 Q Does that sound right to you?</p> <p>20 A Yes.</p> <p>21 Q And my further understanding is a few days after the</p> <p>22 incident Mr. Pasman had Marco euthanized. Is that</p> <p>23 right?</p> <p>24 A Yes.</p> <p>25 Q Was that at your request?</p>
Page 34	Page 36
<p>1 Q How close would you assess Kaleb's relationship was</p> <p>2 with the Pasman grandchildren?</p> <p>3 A To my knowledge, he liked them. But he's like that.</p> <p>4 He likes everybody.</p> <p>5 Q How often were Mr. Pasman's grandchildren at his home?</p> <p>6 Do you have any idea?</p> <p>7 A I would not know.</p> <p>8 Q Within the scope of what you've described to me about</p> <p>9 the neighborhood, is there a way you can assess how</p> <p>10 often the Pasman grandchildren would be within the</p> <p>11 group of kids that were hanging out in the</p> <p>12 neighborhood?</p> <p>13 A In the summers, I know they must have been there a lot</p> <p>14 because it was always Elijah this, Elijah that; and</p> <p>15 Kaleb was always -- and the grandkids, Brenda's</p> <p>16 grandkids. So...</p> <p>17 Q What's the proximity of Mr. Pasman's trailer home to</p> <p>18 where you live with Kaleb?</p> <p>19 A Four trailers from me. I'm counting trailers, I'm</p> <p>20 sorry.</p> <p>21 Q Okay.</p> <p>22 A It's four -- four trailer lots.</p> <p>23 Q On the same side of the street?</p> <p>24 A Yes.</p> <p>25 Q Do you know what kind of dog the dog was that bit</p>	<p>1 A Yes. I called the police department and a detective</p> <p>2 there said that he would go out and get him euthanized</p> <p>3 or whatever -- talk to Pasman to get him euthanized.</p> <p>4 Q And Mr. Pasman honored that request and followed</p> <p>5 through with that?</p> <p>6 A Yes.</p> <p>7 Q And I'm sorry if I repeat any questions. To your</p> <p>8 knowledge, Kaleb did not have any prior knowledge of</p> <p>9 Marco even being on the property?</p> <p>10 A No.</p> <p>11 Q Correct?</p> <p>12 A Correct. I'm sorry.</p> <p>13 Q That was my fault. Bad question.</p> <p>14 If Mr. Pasman or someone else with knowledge would</p> <p>15 provide testimony that Marco had lived with Mr. Pasman</p> <p>16 at that trailer court for approximately four years</p> <p>17 prior to the incident, does that seem possible to you?</p> <p>18 A Not to me.</p> <p>19 Q Because you never saw it before then.</p> <p>20 A Yeah. My neighbor Brenda said the same thing. So...</p> <p>21 Q Said that she wasn't aware of the dog?</p> <p>22 A Yeah.</p> <p>23 Q Do you know Ron Galvan, G-a-l-v-a-n?</p> <p>24 A Yes.</p> <p>25 Q Who is Mr. Galvan?</p>

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1 A He used to be the manager of our trailer court.  
2 Q Is he no longer?  
3 A I think he just does the lot rent now, just figures out  
4 the lot rent now. There's a Mark that manages our  
5 trailer court now -- and Blackburn's son.  
6 Q I'm sorry, what did you say Mr. Galvan does now?  
7 A I think he just manages the money coming in for our lot  
8 rent.  
9 Q For your lot rent?  
10 A Yeah, for the lot rent. I'm sorry if I said that  
11 different.  
12 Q At the time of the dog bite incident in 2017, was  
13 Ron Galvan the manager of the trailer court?  
14 A Yes, he was.  
15 Q Have you ever talked to Mr. Galvan about this incident?  
16 A Yes.  
17 Q What do you recall about that conversation?  
18 A Not a lot. He just told me he didn't want to get into  
19 it because of Blackburn. So...  
20 Q Because of Blackburn?  
21 A Yeah, because Blackburn would tell him not to get into  
22 it. So...  
23 Q I'm assuming you're referring to John Blackburn?  
24 A Yes, I'm sorry. Yeah, John Blackburn.  
25 Q And that's the owner of the trailer court, to your

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1 knowledge?  
2 A Yes.  
3 Q Did Mr. Galvan and you ever discuss whether Mr. Galvan  
4 was aware that Mr. Pasman had a dog?  
5 A No.  
6 Q He didn't say one way or another?  
7 A He didn't say one way or another.  
8 Q So was the conversation as short as you asked  
9 Mr. Galvan -- well, what -- did you ask him some  
10 questions?  
11 A About the incident, yeah, and he didn't say a lot. We  
12 talked about other things. Because I actually kind of  
13 got along with Ron Galvan. So...  
14 Q But when you asked about the incident, Mr. Galvan did  
15 not want to discuss that.  
16 A Yeah.  
17 Q Or had told you that he was instructed not to discuss  
18 it.  
19 A Yeah, he was instructed not to discuss.  
20 Q For the most part, I guess, as you've kind of described  
21 how the kids interacted in the neighborhood, prior to  
22 the incident or at the time of the incident, did Kaleb  
23 have the ability to kind of go where he would like in  
24 the neighborhood?  
25 A Yeah.

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1 Q And the other kids did as well?  
2 A Yeah.  
3 Q And I guess I'm asking in particular as it relates to  
4 Kaleb and his age and his autism, he did not need  
5 direct supervision from you all the time when he was  
6 out and about in the neighborhood.  
7 A No.  
8 Q Correct?  
9 A Correct.  
10 Q Is there any particular reason why you did not name  
11 Mr. Pasman as a defendant in the lawsuit, why you  
12 didn't sue Mr. Pasman?  
13 MR. KING: I'm going to interpose an objection  
14 here. I think the question asks a legal conclusion for  
15 which Ms. Burgi lacks the foundation on which to  
16 answer. Number two, I think it invades the  
17 attorney-client privilege and work product doctrine.  
18 BY MR. ARNDT:  
19 Q Okay. Let me see if I can clarify a little bit,  
20 Teresa. I don't want to know any conversations that  
21 you would have had with Mr. King or his staff in  
22 answering this question, and I'm not trying to ask you  
23 for a legal conclusion. I just want to know factually  
24 did you make a decision for some reason not to sue  
25 Mr. Pasman?

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1 MR. KING: I'm going to interpose the same  
2 objection. I think he's asking a question that  
3 involves legal decision-making, legal judgment. It's  
4 protected by the attorney-client privilege and involves  
5 work product.  
6 BY MR. ARNDT:  
7 Q I'm going to ask you to still answer the question.  
8 MR. KING: I'm going to direct her not to answer.  
9 BY MR. ARNDT:  
10 Q All right. So just to be clear, Teresa -- I want to  
11 make a little bit further of a record on this. I'm  
12 asking you to answer that question, and I understand  
13 your attorney's direction to you not to answer the  
14 question. I just want to make it clear that at some  
15 point I believe you should answer the question, and at  
16 some point we may need to move to compel your answer to  
17 that question; and if we do that, we would probably  
18 also seek our legal fees for having to do that.  
19 So I'm going to ask one more time for you to  
20 answer the question.  
21 MR. KING: I'm going to interpose the very same  
22 objection and instruct the witness not to answer.  
23 BY MR. ARNDT:  
24 Q Okay. Moving forward, Teresa, my understanding is  
25 that -- well, did you sign a lease with someone from

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1 East Winds Court for the property that you live at?  
2 A My sister did, yes.  
3 Q And that's Jennifer Pinkelman?  
4 A Yes.  
5 Q I think a copy of that lease was attached to your  
6 Complaint in this case.  
7 Teresa, I'm showing you what's been previously  
8 marked as Exhibit 2. And I think that was attached as  
9 Exhibit 2 to your Complaint in this case. Do you  
10 recognize that document?  
11 A Yes.  
12 Q Is that the lease that you were referring to that was  
13 entered into by Ms. Pinkelman?  
14 A Yes.  
15 Q It looks like the date of that lease was sometime in  
16 1999. Do you see that?  
17 A Yes.  
18 Q I'm not sure -- it looks like maybe some other  
19 information was redacted, but the actual --  
20 A Yes.  
21 Q -- year was 1999?  
22 A Yeah.  
23 Q And you think that governs the lot in which your  
24 trailer house sits?  
25 A Yes.

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1 Q Did you take over this lease from Ms. Pinkelman?  
2 A Yes.  
3 Q It looks like, on the last page of the lease, the  
4 landlord is listed as D and M Developers, Inc. Do you  
5 see that?  
6 A Yes.  
7 Q Do you know who that is?  
8 A Previous owners, Dykstra.  
9 My sister moved in, in 1999, to this address; and  
10 then I took over the lease when I moved in. And by  
11 then Blackburn owned it, John Blackburn, and changed it  
12 to East Winds trailer court.  
13 Q So the lease that your sister signed in 1999 --  
14 A Uh-huh.  
15 Q -- was a lease with D and M Developers.  
16 A Uh-huh.  
17 Q Yes?  
18 A Yes.  
19 Q Did you ever sign any other type of lease as it relates  
20 to the property?  
21 A I asked Ron Galvan, and he never had me sign a new  
22 lease.  
23 Q You asked Ron Galvan what?  
24 A If I needed to sign a different lease because all the  
25 information on here was old. But we -- the whole time

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1 we were there, we never had to sign a new one until  
2 after my son...  
3 (Interruption by the court reporter.)  
4 (Recess taken from 2:27 p.m. to 2:31 p.m.)  
5 BY MR. ARNDT:  
6 Q Teresa, I think when we left off, I was asking you some  
7 questions about what's been marked as Exhibit 2 in  
8 front of you, and we established that was a lease  
9 signed in 1999 between your sister Jennifer Pinkelman  
10 and the landlord at the time, which was D and M  
11 Developers. Correct?  
12 A Yep.  
13 Q And you think at some point after this lease was  
14 signed, East Winds Court purchased the property, the  
15 trailer court from D and M?  
16 A Yeah. I just can't remember the year. So...  
17 Q Sure. And at the time that the dog bite incident  
18 occurred in 2017, the lease that's marked as Exhibit 2  
19 in front of you is the lease that would have governed  
20 the home -- or the trailer home that you were living  
21 in.  
22 A Yeah.  
23 Q And then you had indicated to me that after the  
24 incident, someone proposed a new lease to you?  
25 A Yes. The Mark guy come out and said we all --

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1 everybody had to sign new leases.  
2 Q I think that was also attached to your Complaint. I  
3 don't see that it's marked, so I think I will have this  
4 marked as an exhibit. Let's make this 1.  
5 (Exhibit 1 is marked for identification.)  
6 BY MR. ARNDT:  
7 Q All right. So now I'm showing you what's been marked  
8 as Exhibit 1, Teresa. Do you recognize that?  
9 A Yes.  
10 Q What is that?  
11 A A lease.  
12 Q Is that the lease --  
13 A Yes.  
14 Q -- that you -- well, that was proposed to somebody  
15 after the incident and, it looks like, is dated April  
16 of 2018?  
17 A Yeah.  
18 Q Who signed this lease?  
19 A My sister.  
20 Q Jennifer Pinkelman?  
21 A Yeah.  
22 Q Why did Ms. Pinkelman sign it instead of you?  
23 A Because she owns the house, so they said it was just  
24 better for her to -- and they're aware that I live  
25 there, though. So...

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<p>1 Q Jennifer Pinkelman owns the trailer court --</p> <p>2 A Yes.</p> <p>3 Q -- or the trailer house?</p> <p>4 A Yes.</p> <p>5 Q Are you aware of what type of lease that Mr. Pasman</p> <p>6 would have executed with East Winds Court? Have you</p> <p>7 ever seen Mr. Pasman's lease?</p> <p>8 A No. I would assume the same thing.</p> <p>9 Q But you obviously don't know for sure.</p> <p>10 A No.</p> <p>11 Q Back to <u>Exhibit 2</u>. The address that's listed on the</p> <p>12 lease is 1406 Belair Road; is that right?</p> <p>13 A Yes.</p> <p>14 Q Is that the same address you gave me as to where you're</p> <p>15 living now?</p> <p>16 A No.</p> <p>17 Q Why is that different?</p> <p>18 A When my sister first moved in there, that's where they</p> <p>19 put her, was on the other road. Belair Road is one</p> <p>20 road and Meadow View is the other.</p> <p>21 And then after John Blackburn took over and he had</p> <p>22 me living in there, he asked me to move over to Meadow</p> <p>23 View Road.</p> <p>24 Q Do you know why?</p> <p>25 A I had -- my ex-husband's mom and dad lived on Belair</p>	<p>1 A Yes.</p> <p>2 Q But prior to the incident with Kaleb, there were a</p> <p>3 number of dogs that would have lived in the trailer</p> <p>4 court?</p> <p>5 A Yeah, but they had to be on leashes or in the house</p> <p>6 because there was no dogs running around. So...</p> <p>7 Q Sure. I understand. And Mr. Pasman's dog wasn't</p> <p>8 running around, was it?</p> <p>9 A I didn't even know he had one. So...</p> <p>10 Q So, I mean, presumably, if it would have been running</p> <p>11 around, you might have known that he had one.</p> <p>12 A I might have, yeah.</p> <p>13 Q What were the other kind of dogs that were living at</p> <p>14 the trailer court at the time of the incident? Do you</p> <p>15 know?</p> <p>16 A I don't know. I just know they're really tall dogs.</p> <p>17 Q Some larger dogs?</p> <p>18 A Yeah, larger dogs.</p> <p>19 Q But none of those dogs ever created any problems that</p> <p>20 you're aware of.</p> <p>21 A Not that I'm aware.</p> <p>22 Q I think I asked you earlier if you had any knowledge of</p> <p>23 whether Mr. Galvan or East Winds knew that Mr. Pasman</p> <p>24 had a dog, and you indicated to me you didn't have that</p> <p>25 knowledge. Is that right?</p>
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<p>1 Road, and they were causing some issues. So at that</p> <p>2 time I had went to John Blackburn, and he said, "Let's</p> <p>3 just move you to the next road and try to not have</p> <p>4 problems."</p> <p>5 Q So Mr. Blackburn was accommodating your request to</p> <p>6 move --</p> <p>7 A Yes.</p> <p>8 Q -- to your current address.</p> <p>9 A At that time, yes.</p> <p>10 Q At the time of the incident with Kaleb being bitten by</p> <p>11 the dog in September of 2017, were you aware of any</p> <p>12 other tenants or people who lived in the trailer court</p> <p>13 having dogs?</p> <p>14 A Yes.</p> <p>15 Q How many, approximately?</p> <p>16 A I would say four or five people -- different people</p> <p>17 have dogs, but they're different breeds. There's only</p> <p>18 one guy that had pit bulls after Kaleb was bit, and</p> <p>19 they were asked to get rid of the dog.</p> <p>20 Q Do you know who that was?</p> <p>21 A The one that lives in Brenda Thompson's house. I don't</p> <p>22 know.</p> <p>23 Q Who asked them to get rid of the dog?</p> <p>24 A Mark, the manager.</p> <p>25 Q That was after the incident with Kaleb?</p>	<p>1 A I didn't have that knowledge.</p> <p>2 Q Do you think there's something that East Winds should</p> <p>3 have done to have knowledge that Mr. Pasman had a dog?</p> <p>4 A I believe that, looking at the leases, they should be</p> <p>5 checking more on what dogs are coming in and out of the</p> <p>6 court.</p> <p>7 Q But you're not -- you pointed to the two leases that --</p> <p>8 A Yes.</p> <p>9 Q -- we've marked as <u>Exhibit 1</u> and was previously marked</p> <p>10 as <u>Exhibit 2</u>.</p> <p>11 A Yeah.</p> <p>12 Q You're not aware of what Mr. Pasman's lease said.</p> <p>13 A No.</p> <p>14 Q Have you had an opportunity to review the sheriff's</p> <p>15 report that was drafted as --</p> <p>16 A Yes.</p> <p>17 Q -- part of their investigation?</p> <p>18 A Yes.</p> <p>19 Q And, again, you've never spoken to Mr. Pasman?</p> <p>20 A No.</p> <p>21 Q I'm going to ask you a few follow-up questions about</p> <p>22 some of the written discovery answers that you provided</p> <p>23 in this case, Teresa.</p> <p>24 A Okay.</p> <p>25 Q There's a document called Answers to Defendant East</p>

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<p>1 Winds Court's Interrogatories and Requests for 2 Production of Documents. 3 Specifically on Interrogatory No. 9, we had asked 4 you to identify people with knowledge of the incident, 5 and your response was "My mother and sister, Jennifer 6 Pinkelman and Cynthia Pinkelman." 7 I'm assuming neither Jennifer or Cynthia witnessed 8 the incident. 9 A No. 10 Q Their knowledge would be related to, I suppose, Kaleb's 11 injuries following the incident? 12 A Yes. They were at the emergency room. 13 Q And I suppose any knowledge about the leases that we've 14 discussed that -- 15 A Yes. 16 Q -- Jennifer would have signed? 17 A Yes. 18 Q Did Cynthia Pinkelman ever live at the trailer court? 19 A Yes. 20 Q Does she still? 21 A No. 22 Q Did Jennifer and Cynthia live together? 23 A Yes. 24 Q And, again, they would have moved away prior to the 25 incident in 2017?</p>	<p>1 a chance to review it. Okay? 2 A Okay. 3 Q Just let me know when you're finished. 4 A (Examines document.) 5 Okay. 6 Q Based upon your review of that sheriff's report, 7 Teresa, is there anything in there that you just read 8 that you think is inaccurate based upon your knowledge 9 of the situation? 10 A I did not ever see a "Beware of Dog" sign, so I -- I 11 don't know. No one's ever seen that, to my knowledge. 12 And what else. There was a couple things. 13 And I think kind of what I said should be about 14 right. Um... 15 Q And I guess I understand there might be information in 16 there -- 17 A Yeah. 18 Q -- that you don't know one way or another because -- 19 A Yeah. 20 Q -- you didn't witness the incident. 21 A Yeah. But, to my knowledge, there was never a "Beware 22 of Dog" sign, so -- because I did not know there was a 23 dog, so... 24 Q Other than that, based upon your personal knowledge, is 25 there anything else in the report that you think is</p>
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<p>1 A Yeah. 2 Q Where do they live now? 3 A Burleigh Street. 4 Q In Yankton? 5 A Yes, in Yankton. 6 (Exhibit 3 is marked for identification.) 7 BY MR. ARNDT: 8 Q Teresa, I'm going to show you what's been marked as 9 Exhibit 3. 10 A Uh-huh. 11 Q Do you recognize that? 12 A Yes, I do. 13 Q What is that? 14 A It's from the sheriff's office. 15 Q Is it the sheriff's report as it relates to this 16 incident with Kaleb being bitten? 17 A To my knowledge, yes. 18 Q And you told me you've reviewed that prior to today. 19 A Yeah. 20 Q And I think that was also attached to your Complaint in 21 this case. 22 A Yes. 23 Q So I guess what I'd like you to do, Teresa, is take a 24 few minutes and read that document to yourself; and 25 then I want to ask you a few questions after you've had</p>	<p>1 just not accurate? 2 A I wouldn't think this is accurate, where, you know, 3 they told him not to come near. They always were 4 playing with him, so -- always playing with Kaleb, so I 5 guess, to my knowledge, that would -- I think that's 6 not accurate. 7 Q In other words, you didn't have any knowledge of anyone 8 telling Kaleb that he shouldn't be on the Pasman 9 property? 10 A No. 11 Q Is that what you're saying? 12 A Yeah, yeah. That's what I'm saying, yes. 13 Q Anything else in the sheriff's report that you think is 14 just not accurate? 15 A I know they were saying that he -- he is saying he had 16 a vicious dog. And like I said, I don't know that he 17 even had a dog, so why would I know that he has a 18 vicious dog. But I was told by several people that he 19 told them that it was a vicious dog. So... 20 Q Okay. I'm not sure I understood the first part of the 21 answer to that. I guess, are you -- 22 A This part where I say -- I supposedly say that he had a 23 vicious dog. I was just told that by people in the 24 trailer court that said Ron Pasman told them that. As 25 far as I knew, when I was at the hospital, that he</p>

1 didn't -- I still was thinking, How did he have a dog?  
2 So...  
3 Q And I think we've established that --  
4 A Yeah.  
5 Q -- that prior to the incident, you weren't aware that  
6 Mr. Pasman had a dog.  
7 A Yep -- yes, sorry.  
8 Q I want to summarize just maybe a few things, Teresa,  
9 and then I think I'll be finished.  
10 A Okay.  
11 Q Number one, to your knowledge, the incident in which  
12 Kaleb was bitten occurred near Mr. Pasman's trailer  
13 home and on the property that Mr. Pasman was leasing  
14 from East Winds.  
15 A Yes.  
16 Q It didn't happen on the street or any common area in  
17 the trailer court.  
18 A Not to my knowledge.  
19 Q You don't know one way or another of whether Kaleb had  
20 permission to be on Mr. Pasman's leased property that  
21 day?  
22 A I wouldn't know. No.  
23 Q And you don't know the specifics of how Kaleb was  
24 actually bitten by the dog, meaning why Kaleb was near  
25 the dog or why the dog would have bit him or anything

1 like that.  
2 A No. I was just told things. So...  
3 Q And prior to the incident, you obviously didn't know  
4 that Mr. Pasman's dog was vicious or had any tendency  
5 to bite anyone because you didn't even know he had a  
6 dog.  
7 A Yep. Right. Yes.  
8 Q And as you sit here today, you don't know one way or  
9 another as to whether or not East Winds had knowledge  
10 of Mr. Pasman having a dog.  
11 A No, I do not.  
12 Q Again, let alone any knowledge that the dog was  
13 dangerous. You don't know that.  
14 A No. No, I do not.  
15 MR. ARNDT: Okay. I think that's all the  
16 questions I have for you, Teresa. Thank you.  
17 THE WITNESS: Okay. Thank you.  
18 MR. KING: We'll waive the reading and signing.  
19 (Whereupon, at 2:53 p.m. the deposition was  
20 concluded.)  
21  
22  
23  
24  
25

1 STATE OF SOUTH DAKOTA  
2  
3 COUNTY OF LINCOLN  
4 I, Audrey M. Barbush, a Registered Professional  
5 Reporter and Notary Public, do hereby certify that the  
6 witness was first duly sworn by me to testify to the truth,  
7 the whole truth, and nothing but the truth relative to the  
8 matter under consideration; that the foregoing pages 4-54,  
9 inclusive, are a true and correct transcript of my stenotype  
10 notes; that the witness did waive the reading and signing of  
11 the deposition transcript.  
12 I further certify that I am not a relative or employee  
13 or attorney or counsel of any of the parties or a relative  
14 or employee of such attorney or counsel, and that I am not  
15 financially interested in this action.  
16 In testimony whereof, I have hereto affixed my  
17 signature this 11th day of March, 2020.  
18  
19  
20  
21 /s/Audrey M. Barbush  
22  
23  
24  
25

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STATE OF SOUTH DAKOTA ) IN CIRCUIT COURT  
COUNTY OF YANKTON ) :SS FIRST JUDICIAL CIRCUIT

TERESA BURGI, INDIVIDUALLY, AND  
TERESA BURGI, AS GUARDIAN AD LITEM FOR  
KALEB RAYMOND BURGI

Plaintiffs

-vs-

EAST WINDS COURT, INC.

Defendant and Third-Party Plaintiff

-vs-

RONALD PASMAN

Third-Party Defendant

\* \* \* \* \*  
TELEPHONIC DEPOSITION OF

MARI PASMAN

AUGUST 31, 2020

\* \* \* \* \*

APPEARANCES:

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<p style="text-align: right;">Page 2</p> <p style="text-align: center;">I N D E X</p> <p>WITNESS                      EXAMINATION BY                      PAGE</p> <p>Ms. Pasman                      Mr. King                      3</p> <p style="text-align: center;">*****</p> <p>The telephonic deposition of MARI PASMAN was taken on the 31st day of August, 2020, commencing at 10:30 a.m.; said deposition taken before Stacy L. Wiebesiek, RPR, CSR, a Notary Public with and for the State of South Dakota.</p> <p style="text-align: center;">MARI PASMAN</p> <p>called as a witness, being first duly sworn, deposed and said as follows:</p>	<p style="text-align: right;">Page 4</p> <p>Q And your mother is Norma Sorace?</p> <p>A Correct.</p> <p>Q Okay. And, Mari, did you graduate from high school?</p> <p>A I did.</p> <p>Q What high school did you go to?</p> <p>A Yankton, South Dakota. Yankton High School, sorry.</p> <p>Q Okay. What year did you graduate?</p> <p>A 2012.</p> <p>Q 2012. What did you do --</p> <p>A Yeah.</p> <p>Q -- after you graduated?</p> <p>A Well, I was living with my father at the time so after I graduated, I went back to Rosebud and I went to college for a little bit. Then I volunteered at the Rosebud Indian Health Service dental clinic, and I was there employed there for about -- or I got employed after about six months of volunteer work for -- so I stayed there for about six -- five -- about four and a half to five years, I believe, I was employed there, and then I moved to Rapid.</p> <p>Q Okay. So by my math, that means you moved to Rapid around 2017.</p> <p>A No, 2000 -- November of '18 --</p> <p>Q November of '18?</p> <p>A -- is when I moved up here.</p> <p>Q Okay.</p>
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">EXAMINATION</p> <p>BY MR. KING:</p> <p>Q Okay. So, Mari, could you state your first, middle and last name and spell them for me?</p> <p>A Mari Nadine Pasman. The first name is M-A-R-I. Middle name is N-A-D-I-N-E. Last name is Pasman, P-A-S-M-A-N.</p> <p>Q Okay. And is it all right if I call you Mari?</p> <p>A Yes, that's perfect.</p> <p>Q Okay. Mari, what is your date of birth?</p> <p>A June 6, 1994.</p> <p>Q Okay. And where do you live now?</p> <p>A In Rapid City, South Dakota.</p> <p>Q What is your address?</p> <p>A 4835 Sturgis Road, Lot 105, Rapid City, South Dakota 57702.</p> <p>Q Is that a trailer house?</p> <p>A Yes.</p> <p>Q Okay. Who do you live with there?</p> <p>A Myself -- well, I just brought my niece out from Rosebud who lives with me now.</p> <p>Q What is her name?</p> <p>A Dominique Harris.</p> <p>Q Okay. And you are -- Ron Pasman, you are his daughter, right?</p> <p>A Correct.</p>	<p style="text-align: right;">Page 5</p> <p>A Yes.</p> <p>Q So how long did you live with your dad in Yankton?</p> <p>A From 2010 to 2012, I believe.</p> <p>Q Now, did you ever own a dog named Marco?</p> <p>A I have.</p> <p>Q Okay. Tell me about that. When did you get Marco?</p> <p>A I got Marco when he was six weeks old.</p> <p>Q Okay.</p> <p>A This was 2013. I believe it was 2013 is when I purchased the dog.</p> <p>Q Who did you purchase the dog from?</p> <p>A A friend.</p> <p>Q Who was your friend?</p> <p>A Leon Balfany from Mission, South Dakota.</p> <p>Q Could you spell her name for me?</p> <p>A L-E-O-N is the first name.</p> <p>Q Okay.</p> <p>A Sorry.</p> <p>Q Go ahead, ma'am.</p> <p>A Oh, last name is Balfany, B-A-L-F-A-N-Y.</p> <p>Q Is Leon Balfany a male or a female?</p> <p>A He's a male.</p> <p>Q And how do you know Leon Balfany?</p> <p>A We had met -- let's see. I met a friend through college, and then that was his acquaintance or whatever,</p>



<p style="text-align: right;">Page 6</p> <p>1 friend.</p> <p>2 Q Okay.</p> <p>3 A Just hanging out, hang out with him basically.</p> <p>4 Q Okay. Is Mr. Balfany, is he a dog breeder, or how</p> <p>5 did he come about having Marco?</p> <p>6 A No, his friend -- he had a dog and he mated her one</p> <p>7 time and that was it so --</p> <p>8 Q Okay. And that's how Marco came into being?</p> <p>9 A Yes.</p> <p>10 Q Okay. So you got Marco in 2013?</p> <p>11 A Is that -- yes.</p> <p>12 Q And Marco was six weeks old at the time?</p> <p>13 A Yes, when I purchased him fresh out of the -- out of</p> <p>14 the nest.</p> <p>15 Q So how much did it cost you to purchase Marco?</p> <p>16 A I can't remember. I think it was like \$250 or 300,</p> <p>17 something around that area.</p> <p>18 Q And Mr. Leon Balfany, he lives on the Rosebud Indian</p> <p>19 Reservation?</p> <p>20 A I don't know where he's at now. We've been out of</p> <p>21 contact for a lot of years.</p> <p>22 Q At that time -- at that time, was he on Rosebud?</p> <p>23 A Yes, at that time, yes, correct, he was in Mission.</p> <p>24 Q So when you purchased Marco, where were you living?</p> <p>25 A In Rosebud.</p>	<p style="text-align: right;">Page 8</p> <p>1 A I am bad with the dates. Like I don't -- so it's</p> <p>2 just kind of an estimate.</p> <p>3 Q What I am looking at is some veterinary clinic</p> <p>4 records for --</p> <p>5 A Uh-huh.</p> <p>6 Q -- Marco from Ron Pasman --</p> <p>7 A Yeah.</p> <p>8 Q -- from the --</p> <p>9 A Okay.</p> <p>10 Q -- Yankton Animal Clinic, and it says that he</p> <p>11 brought Marco in in June of '15.</p> <p>12 A Oh, June of '15.</p> <p>13 Q Yeah. Is it possible you gave it to him --</p> <p>14 A Okay.</p> <p>15 Q -- in 2015?</p> <p>16 A Probably. That seems really -- that seems short. I</p> <p>17 mean, if that's what the vet clinic says. I wouldn't have</p> <p>18 took him all the way to Yankton for a vet visit --</p> <p>19 Q Okay.</p> <p>20 A -- I don't think.</p> <p>21 Q Did you have a vet for Marco out on Rosebud?</p> <p>22 A Yes, I took him to Valentine. Butler -- Butler</p> <p>23 Veterinary Clinic in Valentine, Nebraska.</p> <p>24 Q Butler Vet Clinic, Valentine. So did Marco have any</p> <p>25 health problems?</p>
<p style="text-align: right;">Page 7</p> <p>1 Q Where at specifically?</p> <p>2 A In low rent at my mother's.</p> <p>3 Q Does she live in a low rent apartment building?</p> <p>4 A No, it's a housing -- I don't know. Like a housing</p> <p>5 community, something. I'm not -- it's not an apartment. It's</p> <p>6 a house.</p> <p>7 Q So you purchased Marco. Was Marco purebred?</p> <p>8 A As far as I know.</p> <p>9 Q Were you --</p> <p>10 A I didn't have bloodwork or papers or anything like</p> <p>11 that so --</p> <p>12 Q Okay. No papers. So you lived with your mother</p> <p>13 when you had Marco?</p> <p>14 A Uh-huh, correct.</p> <p>15 Q Okay. So how long did you have Marco with you on</p> <p>16 the Rosebud Indian Reservation with your mother?</p> <p>17 A Well, let's see. So 2013 -- let's see -- I want to</p> <p>18 say at least three years. I want to say I had him about three</p> <p>19 years.</p> <p>20 Q Okay. So if you got her in 2013 --</p> <p>21 A Uh-huh.</p> <p>22 Q -- that means you would have had her until 2016; is</p> <p>23 that right?</p> <p>24 A Yes.</p> <p>25 Q Okay.</p>	<p style="text-align: right;">Page 9</p> <p>1 A No, he was a healthy dog.</p> <p>2 Q Okay. Did you have Marco neutered?</p> <p>3 A Yes.</p> <p>4 Q And that was done at Butler Vet Clinic in Valentine?</p> <p>5 A No, no, that was probably done in Rosebud. They</p> <p>6 have the free vet clinics that come through every summer.</p> <p>7 Q Oh, okay.</p> <p>8 A Yeah. And so they offer that as a free -- you know,</p> <p>9 a free deal, whatever.</p> <p>10 Q Okay. And you wouldn't know who that was?</p> <p>11 A No clue. I mean, I could try to find the paperwork,</p> <p>12 but I doubt I have it.</p> <p>13 Q So what happened? Why did you give the dog to your</p> <p>14 father?</p> <p>15 A My apartment was just too small. The apartment I</p> <p>16 was in was just too small. I was so -- I was at my mother's</p> <p>17 in 2013, when I purchased the dog, and then -- when did Rachel</p> <p>18 have the drowning accident? Was that '14 or '15? Anyway,</p> <p>19 when my sister drowned, I moved myself into her apartment and</p> <p>20 I was residing there for -- let's see. How many years -- '14,</p> <p>21 '15 -- I was residing there at -- for about four years.</p> <p>22 Q Okay. And you had Marco there for a period of time?</p> <p>23 A Well, ever since I -- you know, the whole time I</p> <p>24 owned him.</p> <p>25 Q Okay. And -- and --</p>

Page 10

1 A Yes.

2 Q From the evidence, it likes like you probably gave

3 him to your father sometime before June 17 of '15, the first

4 date that Marco is seen by the vet in Yankton. Do you think

5 that sounds about right?

6 A Probably. I mean, if that's what the documents are

7 saying, then that must be what it is. I don't remember when I

8 brought him up there.

9 Q Okay. And my -- my understanding -- we talked to

10 Joshua.

11 A Uh-huh.

12 Q Do you know who Joshua is?

13 A Yes, that's my nephew.

14 Q Right. We had a deposition of him, and he said that

15 you had to get rid of the dog because the dog was barking and

16 there were some complaints.

17 A Okay. Probably.

18 Q Do you remember --

19 A Let me look --

20 Q Go ahead.

21 A I'm sorry. I mean, that's what dogs do, you know,

22 so if there were some complaints, I didn't hear about them.

23 Q Okay.

24 A And then what -- I wonder where he would have got

25 that idea from? Maybe the neighbors complained to him or

Page 11

1 something. Who knows.

2 Q Okay. So did you -- did Marco ever have any

3 training when you had him?

4 A Not like I sent him to school type training, just

5 to -- you know, from me and from the kids and whoever was

6 around. I mean, he was a smart dog, common sense basically,

7 you know, but he was pretty well behaved as far as my

8 controlling goes so --

9 Q According to the vet clinic, the first record I

10 think describes Marco as headstrong. Do you know why they

11 would --

12 A Headstrong?

13 Q Yeah. Do you know why they would have described him

14 as headstrong?

15 A What does that mean? Like, can you describe that?

16 Q I would think that headstrong means maybe willful,

17 maybe wants to do what he wants to do.

18 A Oh, maybe like a -- I mean, well, it's -- you know,

19 taking a dog to the vet, a dog gets nervous --

20 Q Uh-huh.

21 A -- that's kind of the nature of the dog so I wasn't

22 there really to observe his attitude at the vet so --

23 Q Okay. Did you ever have any problems with Marco?

24 A No, he was good. He was -- we would be having

25 barbecues in the back yard and he would sit there and, you

Page 12

1 know, I would have friends over all the time. He never hurt

2 anybody so I don't know --

3 Q Was he a jumper?

4 A Okay. So, yeah, kind of, but like in the playful

5 way. I mean, he wouldn't just lunge for no reason. You know,

6 you have the ropes that you play with with the dog and you

7 swing it around and the dog tries to get the rope. I mean, we

8 kind of did a lot of that so --

9 Q Uh-huh. So when you had the dog -- when you had the

10 dog, did you walk the dog?

11 A Yeah.

12 Q How often did you --

13 A Actually -- we actually -- we were able to actually

14 let him loose and drive the car and he would run along the

15 dirt road, you know, with us -- along with the car.

16 Q So do you feel Marco is the type of dog that needed

17 exercise?

18 A Oh, yeah, definitely.

19 Q Okay. Would he behave --

20 A Well --

21 Q Go ahead.

22 A Go ahead.

23 Q You were going to say something, ma'am.

24 A Well, I was going to say, well, I don't know. I

25 mean, like I said, we were in the apartment, and being in that

Page 13

1 little space, as big of a dog as he was would make anybody

2 antsy a little bit so of course we would take him to go get

3 his running in.

4 Q Sure.

5 A Not antsy, that's the wrong word but you know what I

6 mean, just being cooped up in a little space for --

7 Q Right, right. It's hard on a dog, right? It's hard

8 on a dog, right?

9 A Well, I wouldn't say hard on him because he was --

10 he had a happy life, but just like anybody, you know, we can

11 only be in a car for so long without having to get out and

12 stretch our legs, right.

13 Q Uh-huh. Bless you.

14 A Excuse me.

15 Q Did the place you lived at, the apartment, did they

16 allow dogs?

17 A They do.

18 Q So they allowed dogs. So why did you send him to

19 your dad again?

20 A The apartment was small. I was -- we were in a

21 confined space. I was always at work. I mean --

22 Q Okay.

23 A -- that's not --

24 Q So you visited Marco at your dad's place in Yankton?

25 A Oh, yeah.

Page 14

1 Q Oh, yeah. And how many times do you think you've  
2 been to Yankton to visit your dad while your dad had Marco?  
3 A Not very often, but I would say -- I mean, at least  
4 twice a year, if not three or four times. You know, it's some  
5 number like that.  
6 Q So when you would visit your dad, you would see  
7 Marco, right?  
8 A Uh-huh, yes.  
9 Q And your dad, did he always have the two beware of  
10 the dog signs up?  
11 A Yeah, as long as I know -- well, when I took him up  
12 there and we took Marco shopping -- well, I went shopping, my  
13 dad didn't go -- I actually grabbed those for him.  
14 Q Where did you buy them at?  
15 A I think we went to Walmart --  
16 Q Okay.  
17 A -- if I'm remembering right. That was a long time  
18 ago. I mean, most likely we went to Walmart or one of the  
19 dollar stores, you know, somewhere like that.  
20 Q So when you bought them -- bless you.  
21 A Thank you.  
22 Q Were the signs probably, I don't know, two feet,  
23 three feet? How big were they?  
24 A They were just regular, normal signs, like -- I  
25 don't know how big those things measure. Like, I don't know,

Page 15

1 10 by 12 or something -- like just the regular metal signs  
2 that people hang up, you know, for like no trespassing and  
3 also different orange and black signs.  
4 Q It was orange and black?  
5 A Yeah.  
6 Q Okay.  
7 A Or white -- whatever they were.  
8 Q Was it -- was it visible from the road in front of  
9 Mr. Pasman's trailer?  
10 A As far as I know. I believe he put one on the left  
11 side and then one on the very front of the trailer.  
12 Q Right. And you bought -- you bought two signs,  
13 right?  
14 A Yeah.  
15 Q Okay. And why did you buy two of them?  
16 A I mean, there's so many sides to a house. It's just  
17 kind of -- or like you could put one on the shed or the garage  
18 and then on the front of the house. I mean, it just kind of  
19 makes sense, I guess.  
20 Q So when you drove up, and I assume you drove to  
21 your -- to see your dad.  
22 A Uh-huh.  
23 Q You would have parked in his driveway, right?  
24 A Oh, I park on the road. He has his two vehicles  
25 taking the driveway so --

Page 16

1 Q So when you walked up, you would have noticed that  
2 one of the beware of the dog signs was on the left in the  
3 front --  
4 A On the left.  
5 Q -- and one was on the right?  
6 A On the side on the right?  
7 Q Yeah, there was --  
8 A Okay.  
9 Q In other words, they both faced the street, and  
10 there's pictures that show that taken from the sheriff.  
11 A All right. Well, he probably moved them.  
12 Q Okay. Now, was there --  
13 A Maybe he felt --  
14 Q Was there ever a kennel in the back yard?  
15 A A kennel? What do you mean, like a doghouse?  
16 Q Yep.  
17 A We did have the shed up for a while -- well, my dad  
18 did. He turned the shed into the doghouse so --  
19 Q I think your dad testified there was no doghouse.  
20 A Well, no doghouse, no. I mean, it was the shed  
21 where he just put Marco for shade basically.  
22 Q Okay. Your dad testified that he got Marco to  
23 protect himself. Does that sound about right?  
24 A Well, I guess if that's how he feels, then, yeah. I  
25 gave it to him so he had a companion because the dog was very

Page 17

1 much into affection and he just had so much personality, the  
2 dog, and I -- you know, when -- when I decided like Marco is  
3 too big for my apartment, dad, do you want my dog, you know,  
4 and so that's kind of how it started.  
5 Q So I'm going to refer to your dad's deposition on  
6 page 26, line 5.  
7 A Okay.  
8 Q And this was your dad's answer. The only reason I  
9 got --  
10 A Okay.  
11 Q The only reason I got one was to protect myself.  
12 That's why I had one because I figured any dogs want to come  
13 around and try to bite me like that, if I had my dog there, he  
14 would tear them up. I ain't playing around and getting killed  
15 from nobody either.  
16 A Okay. Well, I guess that -- the dog part makes  
17 sense because there is a lot of other big dogs that are  
18 jumping at the fence when you go down the street and -- you  
19 know, in his neighborhood so I could see that.  
20 Q There's a lot of big dogs in that trailer park?  
21 A As far as I know, yeah. I don't know about  
22 currently --  
23 Q Sure.  
24 A -- but there used to be, I know that much.  
25 Q Well, you lived there.

Page 18

1 A I did not live at his trailer.  
 2 Q You never lived at his trailer?  
 3 A Not at the trailer. I lived with -- I lived with  
 4 him at the apartment, and then when I graduated high school,  
 5 he had bought the trailer already. He already had it, but I  
 6 never lived there.  
 7 Q Okay. Because I think he testified that he signed  
 8 the lease in 2010.  
 9 A Right. He had it and he was working on it. He  
 10 bought the trailer and he had been working on it. I helped  
 11 him gut the carpets and the walls and level -- get underneath  
 12 and clean it and level it out. We did a lot of work on that  
 13 place.  
 14 Q Okay. Bless you. And your dad's --  
 15 A Thank you.  
 16 Q Your dad says on page 26, line 11, I'm saying that's  
 17 why I got the dog, to protect myself. You know, keeping my  
 18 house from danger, you know. I live by myself, you know. I'm  
 19 not 20 years old no more. Does that sound about right?  
 20 A I mean, I could -- yes, I can hear him saying that,  
 21 but the original intentions, I don't -- now, let me -- let me  
 22 just kind of make this quick statement. I think my dad is  
 23 getting dementia and -- because a few times there's been parts  
 24 where I've had a question or I was reviewing something with  
 25 him and -- and he just doesn't remember talking about it. So

Page 19

1 I'm going to actually -- I don't know -- not agree with his --  
 2 I don't know, whatever that is --  
 3 Q Okay. So --  
 4 A -- if that makes sense.  
 5 Q Okay. Do you know whether he's under treatment with  
 6 a physician for that?  
 7 A It's not -- it's like just now coming on. It's --  
 8 so I'm going to say, no, he's not under treatment.  
 9 Q Okay. He said that you --  
 10 A But I --  
 11 Q He said that you gave --  
 12 A Sorry. Go ahead.  
 13 Q He said that you gave the dog to him, and is that  
 14 true --  
 15 A I did.  
 16 Q -- or did you sell it to him?  
 17 A No, I didn't sell it to him. Why would I sell my  
 18 father my dog?  
 19 Q Okay. I asked him, I said, how long did Mari have  
 20 the dog before you did, I asked him, on his deposition on page  
 21 26.  
 22 A Uh-huh.  
 23 Q And he testified under oath, just enough weeks to  
 24 get him healthy, just enough to take him to the vet or  
 25 whatever she had to do and get him cleaned up. So he -- he

Page 20

1 made it sound like you only had the dog for a couple of weeks.  
 2 A Huh. What was the question you asked him?  
 3 Q How long did Mari have the dog before you did?  
 4 A Interesting. Yeah, I don't know.  
 5 Q I asked him how old was Marco when you got him? He  
 6 testified, a puppy, probably a few weeks. I don't know, a few  
 7 months.  
 8 A Oh, he considers like two years old to still be a  
 9 puppy. I mean, as far as I can remember, you know.  
 10 Q Did everyone -- in your opinion, did everyone in  
 11 East Winds Court know about Marco?  
 12 A I did not live there so I cannot say about that, but  
 13 I do know that, you know, my father would visit the neighbors,  
 14 like any normal person does, and people came over and -- you  
 15 know, and were actually able to engage with Marco because he  
 16 would call me and be -- you know, he would just be so happy  
 17 about it.  
 18 Q That's good. Do you know whether any neighbors were  
 19 ever worried about Marco?  
 20 A I don't know the answer to that because I never  
 21 lived there so --  
 22 Q Did your dad ever tell you that some of the  
 23 neighbors were worried about Marco being aggressive?  
 24 A No. No, he wasn't an aggressive dog.  
 25 Q If he wasn't an aggressive dog, why did you put up

Page 21

1 two beware of the dog signs?  
 2 A Because he's a big dog. He's a -- he's a fairly  
 3 large dog. I mean, I would want to know if there is this huge  
 4 dog in the back yard or even inside of this house that I'm  
 5 approaching. You know, that's my personal preference because  
 6 if there's a big dog, you don't know -- I mean, a dog is a  
 7 dog.  
 8 Q Okay. So do you know Ron Galvan?  
 9 A I do not.  
 10 Q Do you know John Blackburn?  
 11 A No.  
 12 Q Okay. When you were out at the trailer, your dad's  
 13 trailer, did you ever meet any of the trailer park management  
 14 team, the owner, the, you know, day-to-day manager? Did you  
 15 ever see those folks around?  
 16 A No, not that I recall.  
 17 Q So going back to that sign, I imagine that sign was  
 18 easily viewable from the road right in front of the trailer,  
 19 wasn't it?  
 20 A I would say so. Like I said, he could have moved  
 21 them after the first day. You know, who knows. Maybe he  
 22 decided there was a better place for them to be seen. I don't  
 23 know.  
 24 Q Yeah. So how did Marco --  
 25 A Sorry.

Page 22

1 Q -- behave towards children?

2 A He actually grew up around children. I have -- we

3 had my nieces and nephews from my two sisters.

4 Q Sure.

5 A And so, I mean, they were his baby. He was their

6 baby just as much as any other animal or living thing, you

7 know.

8 Q When is the last time you talked to your --

9 A I actually have -- I'm sorry. Go ahead.

10 Q You were going to say something, and I didn't want

11 to cut you off.

12 A Oh, sorry. Yeah, sorry. I apologize. Oh, my

13 goodness. I actually have pictures of Marco, you know,

14 sleeping with the kids from, you know, whatever year --

15 however many years ago, and I have pictures -- I have multiple

16 pictures that I wanted to share with you guys on just how

17 friendly and happy and -- you could see the personality in his

18 face in these pictures.

19 Q So, Mari, you've talked to your dad about your

20 testimony here today?

21 A No.

22 Q Okay. Then why did you get pictures and stuff

23 ready?

24 A Oh.

25 Q You know, you must have talked to somebody, right?

Page 23

1 A Well, I knew he had the court thing coming up, and

2 then once you guys have or once your lady -- your receptionist

3 lady gave me a call, I thought, sure, I have the pictures

4 and -- I mean, I have pictures from years ago. I mean, that's

5 just --

6 Q So who did you -- who did you talk to about your

7 testimony here today?

8 A Like just -- you mean about the hearing in general

9 or like --

10 Q Yeah, the hearing in general, your testimony here

11 today. I just want to know what relatives that you've talked

12 to.

13 A I mean, nobody really. I mean, everybody knows

14 that, you know, we're having the court deal because you

15 summoned me and my mom and my dad, and of course -- to talk

16 about this.

17 Q So you did talk to your dad about this?

18 A I'm sorry?

19 Q So you did talk to your dad about this?

20 A I mean, like I said, I knew we had -- I knew he had

21 the court hearing coming up, and then you guys summoned me

22 so --

23 Q Okay. How did -- how did Marco behave around

24 strangers?

25 A He was good. Like I said, I had -- I had company

Page 24

1 over at my place, you know, quite often. The kids were able

2 to have their friends and stuff in and do whatever. I mean,

3 he was good. He would be outside with us at the barbecues in

4 the back yard.

5 Q When you had him -- when you had him?

6 A Yeah, that's what I'm talking about.

7 Q Right. Ron testified that the dog was only kept out

8 front. He was chained to the hitch.

9 A Out front?

10 Q Yep. Chained to the hitch in front of the trailer.

11 A That would be -- oh, in front of the trailer?

12 Q Yeah.

13 A See, I don't know -- I don't -- like I said, I don't

14 know. I didn't live there with them -- with him. He was up

15 there by himself. I gave the dog to him for a companion so

16 what he did with the dog, I don't know.

17 Q Your dad testified that he had Marco for at least

18 four years. Does that about square with your recollection or

19 not?

20 A Yeah. '19, '18 -- yeah.

21 Q Bless you. Ron never --

22 A Thank you.

23 Q -- walked the dog, did he?

24 A I mean, he's an old man. He took him on car rides

25 and stuff, but as far as walking him, I'm not sure.

Page 25

1 Q Right. And there was no -- there was no dog run --

2 there was no fence around that trailer, was there?

3 A No.

4 Q Okay. Do you know if your dad told the trailer

5 court about Marco?

6 A I am not sure about that.

7 Q Do you know -- do you know of anyone that was afraid

8 of Marco?

9 A No, I mean, not -- no. I mean, he's a big dog. So

10 anybody that does not know him or is not greeted to him by,

11 you know, one of us is naturally going to be like, oh, my God,

12 that's a big dog, but other than that, no, I mean, he's a

13 friendly dog.

14 Q Did Marco ever bite anybody that you know?

15 A No.

16 Q Do you know if Marco ever bit anybody after you gave

17 him to your dad?

18 A Other than the incident the one day, no.

19 Q What do you know about that deal?

20 A I just know the dog -- well, from what Josh and

21 Elijah and -- Josh and Elijah told me is, he was chained up in

22 the back yard and the kid went up to him, I guess, so that's

23 pretty much it.

24 Q Did you ever see the dog chained up in the back

25 yard?

<p style="text-align: right;">Page 26</p> <p>1 A Yeah, that's where the shed was that I mentioned.</p> <p>2 Q Yeah, but there was no shed at the time of this</p> <p>3 incident.</p> <p>4 A Oh, okay. So he must have tore it down then, okay.</p> <p>5 Q Your dad testified the dog was always kept on the</p> <p>6 chain on the hitch in the front.</p> <p>7 A Okay. Well, that's out of my knowledge.</p> <p>8 Q Uh-huh.</p> <p>9 A Excuse me. Sorry.</p> <p>10 Q Did you ever hear Marco growl at anybody?</p> <p>11 A Growl? No, I mean, no, not directly or like -- no.</p> <p>12 I can't even think of what his growl would have sounded like</p> <p>13 because he just wasn't that kind of dog so --</p> <p>14 Q You really don't know how -- it sounds to me like --</p> <p>15 it sounds to me like you really don't know how the dog lived</p> <p>16 after you gave him to Mr. Pasman, your dad.</p> <p>17 A I mean, well, he was happy, I mean, healthy. He</p> <p>18 seemed happy when we went over there.</p> <p>19 Q And you went there twice --</p> <p>20 A And he was always --</p> <p>21 Q You went there twice a year, right?</p> <p>22 A Two to four. It varies. It was never a scheduled</p> <p>23 thing. It was just when I had a few extra dollars, I'm taking</p> <p>24 a trip to see my dad, you know, so --</p> <p>25 Q How long would you stay with him?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q Lunge.</p> <p>2 A Not -- yeah, I -- I heard that part, but, I mean,</p> <p>3 no, unless it's like we were playing with him or, you know,</p> <p>4 for some reason --</p> <p>5 Q So if there was a reason, then that would be</p> <p>6 correct, Marco would lunge at the end of his chain?</p> <p>7 A Well, maybe -- I mean, I don't want to say yes or no</p> <p>8 to that. I mean, dogs -- dogs do that.</p> <p>9 Q Because you don't know? You don't know; is that</p> <p>10 true?</p> <p>11 A Yeah, we'll say I don't know.</p> <p>12 Q All right. Do you know if Marco would bark at</p> <p>13 people who passed by?</p> <p>14 A Not necessarily because when we would be like, for</p> <p>15 example, in the back yard, I was in a fiveplex, okay, and</p> <p>16 my next-door neighbor on both sides would actually come and</p> <p>17 visit, and they were able to hang out on the back porch with</p> <p>18 me and my dog, you know, so --</p> <p>19 Q So who was your landlord when you had Marco?</p> <p>20 A The SWA it's called. It's a Lakota word. SWA in</p> <p>21 Rosebud.</p> <p>22 Q Do you know who owns that?</p> <p>23 A The tribe.</p> <p>24 Q The tribe?</p> <p>25 A Uh-huh.</p>
<p style="text-align: right;">Page 27</p> <p>1 A A couple days.</p> <p>2 Q Okay.</p> <p>3 A A weekend, figure.</p> <p>4 Q And your dad and the sheriff took pictures of Marco</p> <p>5 with the beware of the dog signs up and with the chain right</p> <p>6 in front --</p> <p>7 A Oh, really.</p> <p>8 Q -- chained to the hitch. But if you were there, it</p> <p>9 sounds like you really don't know. I mean, if you don't know</p> <p>10 those facts --</p> <p>11 A Yeah, no, I thought it happened in the back yard.</p> <p>12 Q Yeah. And that's because that's what somebody told</p> <p>13 you?</p> <p>14 A I mean, I would like to say that. Maybe it's just</p> <p>15 what I've assumed because that's where I've known him to be</p> <p>16 tied up at was at the shed. I mean, I honestly don't have an</p> <p>17 answer to that.</p> <p>18 Q Okay. And you're not aware of any neighbors</p> <p>19 thinking Marco was aggressive?</p> <p>20 A Not that I know of, no. As far as I know, everybody</p> <p>21 was able to come up to him and pet him and, you know, be</p> <p>22 friendly with him so --</p> <p>23 Q Did you ever know Marco to kind of lunge at the end</p> <p>24 of his chain?</p> <p>25 A Lunge? I mean --</p>	<p style="text-align: right;">Page 29</p> <p>1 Q And they would certainly have --</p> <p>2 A I would say so. I'm not --</p> <p>3 Q Well, they would have records of when you lived</p> <p>4 there, right?</p> <p>5 A Yeah.</p> <p>6 Q And they would also have records of Marco as well,</p> <p>7 right?</p> <p>8 A Well, not necessarily, maybe. I know I didn't go to</p> <p>9 them and say, hey, I'm getting a puppy because it's the</p> <p>10 reservation. Nobody does that. There's wild dogs running</p> <p>11 around all over the place down there, you know, so rules</p> <p>12 aren't as strict down there with dog ownership, I guess you</p> <p>13 can say.</p> <p>14 MR. ARNDT: David, this is Mark. Can we take</p> <p>15 just a quick two-minute break?</p> <p>16 MR. KING: Of course.</p> <p>17 (A recess was taken.)</p> <p>18 BY MR. KING:</p> <p>19 Q So, ma'am, you're still under oath.</p> <p>20 A Okay.</p> <p>21 Q Did you ever see kids playing basketball out in</p> <p>22 front of the house on the road?</p> <p>23 A I think my nephews had a basketball hoop, didn't</p> <p>24 they? I'm not sure.</p> <p>25 Q Did you ever see them playing basketball out on the</p>

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1 road with that basketball hoop?

2 **A No, because I wasn't really up there.**

3 **Q So I want to question you a little bit more about**

4 **these signs.**

5 **A Okay.**

6 **Q And this is from your dad's deposition. He said --**

7 **A Okay.**

8 **Q On page 39, Pasman pointed out that there are two**

9 **beware of the dog signs. Answer, that's right. Posted on the**

10 **front steps right next door to where Marco was tied up.**

11 **That's right. You would have to be blind not to see them.**

12 **Question, you would have --**

13 **A Okay.**

14 **Q You would have to be blind not to see them? Answer,**

15 **that's right. Everyone saw those signs. That's right, as far**

16 **as I'm concerned. Those were your dad's answers so I'm --**

17 **A Okay.**

18 **Q -- going to kind of go back over that with you a**

19 **little bit --**

20 **A Okay.**

21 **Q -- and ask you again, did you see those beware of**

22 **the dog signs posted, both of them, in the front on the**

23 **trailer, yes or no?**

24 **A Okay. So does that have to be a yes or a no answer**

25 **or can I --**

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1 **Q Go ahead. Go ahead.**

2 **A Okay. When I purchased the signs we put one on the**

3 **left and one on the front. I don't know what he did after I**

4 **left. He probably moved them because he decided the dog was**

5 **not going to be in the back yard. I don't know.**

6 **Q Because you said one on the left, and there was one**

7 **on the left.**

8 **A Yes.**

9 **Q And there was one on the left. There is one on the**

10 **left, right, on the front porch, and there's also one right on**

11 **the right.**

12 **A Okay. I was talking about like on the left like if**

13 **you're standing on the road looking at his house, it would be**

14 **on the left side -- on the left wall, not on the left side of**

15 **the front.**

16 **Q Okay. So I asked your dad about that on page 40.**

17 **Question, well, Pasman --**

18 **A Okay.**

19 **Q -- Pasman pointed out there was two beware of dog**

20 **signs. Your dad's answer, yeah. Question, posted on the**

21 **front steps right next to where Marco was tied up? Answer,**

22 **yes, on the front porch, right. Question, and those had been**

23 **up the entire time you had Marco? Answer, that's right.**

24 **Question, Pasman said Marco was chained to the hitch of the**

25 **trailer house and he's never gotten away. Answer, that's**

Page 32

1 right. Question, I took digital pictures of the signs, the

2 blood on the ground where the dog bite occurred, okay, and the

3 chain used to tie Marco up. Answer, right.

4 Your dad's testimony indicates that Marco was kept

5 the entire time in the front chained to the hitch. How do you

6 square that with your testimony?

7 **A When I first brought him, like I said, we had the**

8 **shed, and that's as far as I know. Like I said, I only went**

9 **up there a number of times a year, if even that, and it was**

10 **probably a year's time where I didn't go up there, you know,**

11 **so between -- you know, and this whole time period of four or**

12 **five years, I mean, a lot could have changed.**

13 **Q Okay. So did you ever know Marco to run loose?**

14 **A When I let him, yeah, but like it would be like to**

15 **play in the snow or, like I said, to take him on his run,**

16 **yeah.**

17 **Q Has the landlord ever -- has East Winds trailer park**

18 **or their insurance company ever talked to you about Marco?**

19 **A I -- like I said, I never even met the landlord so I**

20 **would have no -- I mean, that whole answer is a no, I guess.**

21 **Q You love your dad?**

22 **A I do.**

23 **Q Yeah. You want to protect your dad, don't you?**

24 **A I mean, what happened happened. There's -- you**

25 **know, I'm just telling what I know so --**

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1 **Q Sure. And are you aware that Teresa Burgi as**

2 **herself and as a guardian ad litem have sued the East Winds**

3 **trailer court?**

4 **A Oh, wow. Sued the trailer court? No, that's the --**

5 **okay, that must be the mom then.**

6 **Q Yep.**

7 **A Okay.**

8 **Q Were you aware of that?**

9 **A I don't -- I'm not sure if she was suing the trailer**

10 **court or my dad. I don't --**

11 **Q Well, we did --**

12 **A I guess I didn't really --**

13 **Q Sure. We did not sue your dad, but the landlord has**

14 **filed a lawsuit against your dad.**

15 **A Oh, wow.**

16 **Q So we were trying to understand a little bit more**

17 **about who would have known what, when and how. Did you know**

18 **of any other dangerous dogs in that trailer park?**

19 **A Like I said, as you go up and down the road, I mean,**

20 **there were other big dogs who, like any other dogs, were**

21 **lunging at the fence or whatever, you know, the case may be or**

22 **running up and down the yard. I was not there long enough to**

23 **get to personally know and go examine the dog if they were**

24 **dangerous or not, you know, so --**

25 **Q Well, and I guess I'm not asking that. And I don't**

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1 think anyone is asking if you examined the dog or anything,  
 2 but, you know, if you were --  
 3 **A For sure.**  
 4 **Q --** out in that trailer park, you know, I assume  
 5 there's other dogs that were aggressive, not just your dad's,  
 6 but other dogs --  
 7 **A Right.**  
 8 **Q --** that were aggressive that you would want to have  
 9 avoided if at all possible. Is that true or not?  
 10 **A Yeah, I would say so. I mean, any large dog that**  
 11 **you're unfamiliar with you're going to not want to -- I mean,**  
 12 **it's just a large dog. I mean, that's that.**  
 13 **Q** You know, your dad talked about a dog that lived up  
 14 the street --  
 15 **A Okay.**  
 16 **Q --** and he said a neighbor down the street has a  
 17 monster dog.  
 18 **A Okay.**  
 19 **Q** And your dad is worried about that dog. Do you know  
 20 what dog he's referring to?  
 21 **A I know there's a huge white lab that's like halfway**  
 22 **down the street or something. Currently, that's as of right**  
 23 **now. Other than that, I guess I never really paid much**  
 24 **attention.**  
 25 **Q** Your dad said there's a big -- it's behind a big

Page 35

1 chain-link fence, and he thinks he's going to bust through it.  
 2 **A Okay.**  
 3 **Q** Did you know that? Are you aware of that dog?  
 4 **A I'm not sure. I mean, I'm not, you know, up there**  
 5 **enough to --**  
 6 **Q** To know?  
 7 **A --** to pay attention. But like I do know that there  
 8 **was the one big white -- I think it's a big white dog, like a**  
 9 **big white lab or something that seems pretty hyper and jumps**  
 10 **around, you know, on the fence and stuff.**  
 11 **Q** Well, your dad said that he wants -- one of the  
 12 reasons he wanted Marco was to protect him, as a dog of  
 13 protection, and to protect him against other aggressive dogs  
 14 in the park. Did your dad ever tell you that?  
 15 **A I mean, I guess that's just kind of an instinct or**  
 16 **something. You know, if you feel like you're in danger, you**  
 17 **want some means of protection, right.**  
 18 **Q** Did your dad ever tell you that he was scared of  
 19 these other dogs in the trailer park?  
 20 **A He's brought the dogs up a couple times, yeah.**  
 21 **Q** That he was --  
 22 **A But, I mean --**  
 23 **Q --** concerned about them?  
 24 **A --** but he never went into like -- I'm sorry?  
 25 **Q** That he was concerned about his safety and the

Page 36

1 safety of Marco in the trailer park?  
 2 **A His safety and the safety --** well, I mean, like  
 3 he -- like you already quoted him and he said, you know, the  
 4 dog is probably going to bust through the fence, and if he  
 5 happens to be outside, he's an old man. He can't exactly move  
 6 that fast to get away from a dog so I guess I could see where  
 7 he's coming from.  
 8 **Q** Did your dad ever complain to the landlord about the  
 9 dog -- other dogs?  
 10 **A That I'm unsure of. I want to say yeah, but I don't**  
 11 **know. I would assume so. I would say -- I would assume he**  
 12 **would if he was concerned about it.**  
 13 **Q** Your dad said that he warned, like Elijah and  
 14 Joshua, you know, to warn people that Marco was dangerous.  
 15 Do you know why your dad would have asked Elijah and Joshua  
 16 to warn people if Marco wasn't dangerous?  
 17 **MR. ARNDT:** I'm going to object to the form  
 18 of the question. Hold on one second, Mari. I'm  
 19 going to object to the form of the question. I  
 20 believe it misstates the witness's prior testimony.  
 21 You can go ahead and answer.  
 22 **BY MR. KING:**  
 23 **Q** Go ahead.  
 24 **A Okay. Can you repeat the question again now?**  
 25 **Q** Sure. Your dad testified that he -- he told

Page 37

1 Joshua -- he old Elijah, hey, warn other people about Marco.  
 2 Marco is dangerous, you know, keep him away. Were you aware  
 3 of that?  
 4 **A I mean --**  
 5 **MR. ARNDT:** The same objection.  
 6 **THE WITNESS:** I'm sorry.  
 7 **MR. KING:** Go ahead.  
 8 **MR. ARNDT:** That's all right. One second,  
 9 Mari.  
 10 **THE WITNESS:** Oh, okay.  
 11 **MR. ARNDT:** The same objection. Counsel's  
 12 question misstates the witness's prior testimony.  
 13 Go head, Mari.  
 14 **MR. KING:** Mark, your objection stands. I  
 15 need her to answer the question.  
 16 **MR. ARNDT:** Yeah, that's what I said.  
 17 **BY MR. KING:**  
 18 **Q** Go ahead, Mari.  
 19 **A** So I would say he just did that to keep people away  
 20 probably. You know, my dad -- I'm sure he's brought up about  
 21 his, you know, New York stuff and being in the Midwest so he  
 22 doesn't want to be bothered. And I'm just going to assume  
 23 that it was to keep people away and out of his business, I  
 24 guess. I don't know whatever business he had going on, if  
 25 that makes sense.



<p style="text-align: right;">Page 38</p> <p>1 Q Did your dad run a business out of that trailer?</p> <p>2 A No.</p> <p>3 Q Okay. I'm referring to page 41, line 22. Question,</p> <p>4 Elijah stated that he told Kaleb to stay away from the house</p> <p>5 as the dog was outside. Your dad's answer, yeah. So Elijah</p> <p>6 was trying to warn Kaleb? Answer, yeah, it looks like it. It</p> <p>7 looks like it. Warn him that the dog was dangerous, right?</p> <p>8 Uh-huh.</p> <p>9 A Okay.</p> <p>10 Q Line 20, question, Elijah stated he told Kaleb to</p> <p>11 stay away from the house as the dog was outside. Your dad's</p> <p>12 answer, yeah, right, so -- okay. Question, but you told me</p> <p>13 that Elijah warned him, true? Answer, yes. Elijah warned</p> <p>14 Kaleb specifically, hey, that dog is dangerous? Answer, from</p> <p>15 your dad, yes. Well -- he said that in here. Question, no.</p> <p>16 Answer, so -- so what are you saying that for? Well --</p> <p>17 question, well, why did he warn him? Answer, from your dad,</p> <p>18 because he probably didn't want the dog to jump on him.</p> <p>19 Because the dog was a jumper? He's a big dog. The dog gets</p> <p>20 up. It's a big dog. He'll knock me down, I mean, you know.</p> <p>21 Do you know why your dad would have told Elijah and Joshuah</p> <p>22 that Marco was dangerous and warn others to stay away?</p> <p>23 A I mean, just like you just stated, the dog is a big</p> <p>24 dog. I mean, who wouldn't want to stay away from a big dog?</p> <p>25 Like, it just doesn't make any sense. He's a big dog and he's</p>	<p style="text-align: right;">Page 40</p> <p>1 the trailer, that's -- see, I'm having a hard time picturing</p> <p>2 where he would have put him because the way the front of his</p> <p>3 trailer is, there's barely any room, and he would back the --</p> <p>4 the van in and the car would be right next to it.</p> <p>5 Q Yep.</p> <p>6 A And so, I guess I just don't understand like where</p> <p>7 he was. I don't know.</p> <p>8 Q Can you picture the hitch in front of the trailer?</p> <p>9 A Yeah, it's the triangle part, right?</p> <p>10 Q Yep, yep.</p> <p>11 A Yeah.</p> <p>12 Q And the sheriff took pictures of it that day and the</p> <p>13 chain is clearly attached to the hitch.</p> <p>14 A Oh, wow. Okay. Well --</p> <p>15 Q Were you not aware of that?</p> <p>16 A I'm getting mixed up with the hitch of the trailer</p> <p>17 and the hitch of the van. I'm sorry. Okay. So, I mean, no,</p> <p>18 actually, but like -- like I said, I haven't been up there</p> <p>19 that much, maybe twice a year to four times a year, I mean, so</p> <p>20 I don't know.</p> <p>21 Q So I asked your dad about the collar on page 56, and</p> <p>22 I asked him --</p> <p>23 A Okay.</p> <p>24 Q -- I had him review a picture which was DSN --</p> <p>25 DSCN6163. And your dad's answer was, yeah, right, yep, hooks</p>
<p style="text-align: right;">Page 39</p> <p>1 friendly. He literally will jump and give you a hug. Like, I</p> <p>2 mean, I have pictures of things like this and I don't know. I</p> <p>3 just -- I don't know why he would say he's dangerous.</p> <p>4 Probably because he's a big dog. I mean, the dog was not a</p> <p>5 dangerous dog so that's -- I kind -- that kind of offends me</p> <p>6 when you guys say dangerous because he wasn't a dangerous dog.</p> <p>7 Q Well, I didn't say the dog was dangerous.</p> <p>8 A I know. I don't know why --</p> <p>9 Q Excuse me, ma'am.</p> <p>10 A Yeah.</p> <p>11 Q I pointed out that your dad --</p> <p>12 A Yeah.</p> <p>13 Q -- warned other people your dog -- that Marco was</p> <p>14 dangerous.</p> <p>15 A Right, yeah, for sure. I mean, I don't know why.</p> <p>16 My dad has a strange way of thinking.</p> <p>17 Q Do you think it's strange to warn other people if a</p> <p>18 dog is dangerous?</p> <p>19 A When he's not a dangerous dog, I mean, but like I</p> <p>20 said, he probably just wanted to keep people away. He doesn't</p> <p>21 want people coming over and petting the dog because -- I don't</p> <p>22 know.</p> <p>23 Q And when you were there, did you ever see Marco</p> <p>24 chained to the hitch in front of the trailer?</p> <p>25 A I have seen him chained on the hitch. In front of</p>	<p style="text-align: right;">Page 41</p> <p>1 it to his collar. And I asked your dad, how do you know that</p> <p>2 the chain was tightened? Answer, because he was hooked onto</p> <p>3 the chain. He was hooked onto the collar. He's always</p> <p>4 chained. There's no other way to do it. Otherwise, he'll get</p> <p>5 off. He will slip right out of it. On the collar, he would</p> <p>6 slip right out of his collar. That would never hold his</p> <p>7 collar.</p> <p>8 Why would Marco need to be held in such a fashion if</p> <p>9 he wasn't a danger to anyone around him?</p> <p>10 A Okay. So with my dad being as old as he is and</p> <p>11 Marco being as big of a dog as he was and being on a chain or</p> <p>12 in the house, if he does get off, he's going to go on a run,</p> <p>13 right, the dog is, because he needs to stretch his legs. And</p> <p>14 that big of a dog running around would probably put -- you</p> <p>15 know, bother people a little bit. I mean, that's just nature,</p> <p>16 I guess, or I don't know. That's my only answer to that.</p> <p>17 Q Did you ever tease the dog?</p> <p>18 A Do we tease the dog?</p> <p>19 Q Yeah. Did you ever tease the dog?</p> <p>20 A Did I ever tease him? No, he was my dog. I played</p> <p>21 with him.</p> <p>22 Q Okay. Did you ever see anyone else tease your dog?</p> <p>23 A One time there was a drunk kid who -- when I had</p> <p>24 Marco outside, this drunk kid -- this was in Rosebud -- came</p> <p>25 and started throwing stuff at my dog who's on the chain.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q How did your dog react?</p> <p>2 A He -- I mean, the dog felt threatened. I mean, he</p> <p>3 was -- of course, he was like backed up, but like -- I want to</p> <p>4 say almost in maybe a little of an attack deal, but he wasn't</p> <p>5 like -- he looked scared, but he looked like he was not going</p> <p>6 to allow this guy to hurt him either.</p> <p>7 Q He was in attack mode?</p> <p>8 A Not -- I wouldn't say attack mode. Attack mode</p> <p>9 would be he would be jumping at him and barking and growling</p> <p>10 and trying to get at the guy. Do you know what I mean?</p> <p>11 Q There's no question that Marco is a very strong dog,</p> <p>12 is there?</p> <p>13 A He was a strong dog.</p> <p>14 Q And the vet described the dog as headstrong.</p> <p>15 That's -- you don't fully understand what that means; is that</p> <p>16 correct?</p> <p>17 A I guess I'm trying to picture him being like -- I</p> <p>18 guess, like headstrong, and you said like doing what he wants</p> <p>19 to do. I mean, like I said, he didn't go to any actual school</p> <p>20 or anything -- you know, obedience school but -- I mean, he</p> <p>21 was a happy -- I don't know how to explain it. It wasn't</p> <p>22 headstrong to where he was aggressive.</p> <p>23 Q Okay. So --</p> <p>24 A It was not like that.</p> <p>25 Q So if you were walking past this large, very strong</p>	<p style="text-align: right;">Page 44</p> <p>1 landlord and you go through the trailer park every day, okay,</p> <p>2 and --</p> <p>3 A Okay.</p> <p>4 Q -- you drive past and there is a large, big, strong</p> <p>5 85-pound male pit bull kept on a chain with this vest</p> <p>6 contraption to keep him on that chain with two large beware of</p> <p>7 the dog signs up, do you believe just the average passersby or</p> <p>8 manager would have thought the dog was, you know, potentially</p> <p>9 dangerous?</p> <p>10 A I guess it depends on how the dog is acting.</p> <p>11 Q So your dad testified, on page 66, he had the dog</p> <p>12 for four years, but it didn't really mean that he wanted the</p> <p>13 dog and --</p> <p>14 A Okay.</p> <p>15 Q -- and I'll just read you what your dad said</p> <p>16 because I have a question for you.</p> <p>17 A Okay.</p> <p>18 Q I asked him, you don't know the conversation when</p> <p>19 you took the dog -- from you? In the very beginning, I don't</p> <p>20 know what my intentions were is what I'm trying to say. Well,</p> <p>21 that's fine. Answer, yeah, that's right. Question, that's</p> <p>22 fine. Answer, I'm not going to say somebody -- just because I</p> <p>23 had the dog for four years doesn't mean I wanted the dog</p> <p>24 either in the four years that I wanted him. Question, sure.</p> <p>25 Answer, I might have taken him out of respect for somebody so</p>
<p style="text-align: right;">Page 43</p> <p>1 dog, who was protective --</p> <p>2 A Uh-huh.</p> <p>3 Q -- and you were out in the street and there's two</p> <p>4 beware of dog signs, would you believe the dog was dangerous?</p> <p>5 A Yeah.</p> <p>6 Q Okay.</p> <p>7 A Yeah, if I didn't know the dog then, yes.</p> <p>8 Q Okay. So if the landlord drove by, do you think --</p> <p>9 A Okay.</p> <p>10 Q -- they, you know, knew about Marco, knew Marco was</p> <p>11 big and knew Marco was potentially dangerous because of the</p> <p>12 two large beware of the dog signs?</p> <p>13 MR. ARNDT: Objection, calls for speculation.</p> <p>14 BY MR. KING:</p> <p>15 Q Go ahead and answer.</p> <p>16 MR. ARNDT: You can answer, Mari.</p> <p>17 THE WITNESS: Wait. Sorry.</p> <p>18 BY MR. KING:</p> <p>19 Q Go ahead and answer, ma'am.</p> <p>20 A Does the -- I mean, if he just drove by and did not</p> <p>21 know the dog was there, is that what you're saying?</p> <p>22 Q No, no, no, no. If you're the landlord, okay, and</p> <p>23 you --</p> <p>24 A Okay.</p> <p>25 Q -- and you drive -- you're the manager for the</p>	<p style="text-align: right;">Page 45</p> <p>1 that's another story too. Question, that's very important.</p> <p>2 A Okay.</p> <p>3 Q Your dad's next answer. That's right because I was</p> <p>4 working like Galvan said so it was hard for me to even take</p> <p>5 care of the dog. Question, so you didn't even really want the</p> <p>6 damn dog? Your dad's answer, well, in the beginning, I don't</p> <p>7 remember. So why did your dad take the dog if he didn't</p> <p>8 really want it? I mean, did you have to get rid of this dog?</p> <p>9 MR. ARNDT: Objection, calls for speculation.</p> <p>10 BY MR. KING:</p> <p>11 Q No, I want your answer. Did you have to get rid of</p> <p>12 this dog?</p> <p>13 A No, I did not have to get rid of him.</p> <p>14 Q Then why were you getting rid of him?</p> <p>15 A Because the apartment -- the dog was too big for the</p> <p>16 apartment I was in, and I was at work all the time.</p> <p>17 Q And there were complaints about Marco's behavior,</p> <p>18 wasn't there?</p> <p>19 A Where?</p> <p>20 Q At the apartment, the barking.</p> <p>21 A Like I said, if there was, I didn't know about it.</p> <p>22 Q Then why did you get rid of the dog?</p> <p>23 A Because the apartment was too small where I was, and</p> <p>24 I was working all the time. I was a dental assistant. I</p> <p>25 would be at work sometimes until 6 o'clock, 6:30, 7 o'clock,</p>

<p style="text-align: right;">Page 46</p> <p>1 from 7:30 in the morning.</p> <p>2 Q Sure. So let me ask you another question. Tell me</p> <p>3 about your apartment, the apartment you had with Marco.</p> <p>4 A Like exactly what do you want to know about it?</p> <p>5 Q Describe the layout for me.</p> <p>6 A Okay. You walk in the front door. You have the</p> <p>7 living room and you go -- on the other side of the wall of the</p> <p>8 living room and there was the bedroom, and then you got --</p> <p>9 when you come in the front door and you go to the right, there</p> <p>10 was the kitchen. And when you walked through the kitchen, you</p> <p>11 go to the left and there was the back door. Very small.</p> <p>12 Q Okay. And a bathroom?</p> <p>13 A Yeah, the bathroom was tucked between the hallway</p> <p>14 that went to the back door and the bedroom.</p> <p>15 Q And there was a closet --</p> <p>16 A You walk in and you --</p> <p>17 Q And there was a closet?</p> <p>18 A I'm sorry?</p> <p>19 Q There was a closet when you went in the door?</p> <p>20 A In the -- okay. Yeah, behind the front door.</p> <p>21 Q Okay. And there was also a closet in the bedroom,</p> <p>22 right?</p> <p>23 A Yes.</p> <p>24 Q And the kitchen had cabinets, fridge, all that kind</p> <p>25 of stuff, right?</p>	<p style="text-align: right;">Page 48</p> <p>1 the same but --</p> <p>2 Q It's all the same.</p> <p>3 A But as I mentioned, it was a lot better to suit the</p> <p>4 dog.</p> <p>5 Q Okay. And --</p> <p>6 A And my father was -- my father was alone.</p> <p>7 Q And he needed --</p> <p>8 A And like I said, I gave -- I wanted to give the dog</p> <p>9 to him as a companion.</p> <p>10 Q Yep. And you said that you got rid of him because</p> <p>11 of the -- you know, the housing, it was too small, and you</p> <p>12 worked all day. But Ron was living in a small trailer, old,</p> <p>13 that you guys had to fix up, and he was working at that</p> <p>14 time --</p> <p>15 A Uh-huh.</p> <p>16 Q -- right?</p> <p>17 A Okay. Yeah, correct.</p> <p>18 Q That's true. So his situation isn't any different</p> <p>19 than yours?</p> <p>20 A Well, not necessarily except, he was alone, and like</p> <p>21 I said, I wanted him -- I didn't want him to be there alone.</p> <p>22 I mean, it's my dad. I didn't want him alone.</p> <p>23 Q Why did he take the dog if he didn't really want it?</p> <p>24 A That I --</p> <p>25 MR. ARNDT: Objection, calls for speculation.</p>
<p style="text-align: right;">Page 47</p> <p>1 A Normal kitchen, yeah.</p> <p>2 Q Normal kitchen. So when we compare that to Ron</p> <p>3 Pasman's house, that trailer, he doesn't have anything that</p> <p>4 you didn't?</p> <p>5 A He doesn't have --</p> <p>6 Q I mean, his trailer --</p> <p>7 A He does not have anything --</p> <p>8 Q His trailer is the same size?</p> <p>9 A I'm sorry.</p> <p>10 Q It's got -- his trailer is the same size and it has</p> <p>11 the same amenities, doesn't it?</p> <p>12 A Not the same size.</p> <p>13 Q Tell me where it's different.</p> <p>14 A I mean, it was a whole big trailer. It was a whole</p> <p>15 house versus one little apartment, little one-bedroom</p> <p>16 apartment.</p> <p>17 Q Well, but when we go -- sure. But when we go</p> <p>18 through it, Ron's trailer has a kitchen, right?</p> <p>19 A True.</p> <p>20 Q And it has a living room, right?</p> <p>21 A True.</p> <p>22 Q And it has a bedroom, right?</p> <p>23 A Okay.</p> <p>24 Q And it's got two closets, right?</p> <p>25 A I mean, I guess, if you want to look at it, it's all</p>	<p style="text-align: right;">Page 49</p> <p>1 BY MR. KING:</p> <p>2 Q That you don't know?</p> <p>3 A Because I was his daughter and I asked him too</p> <p>4 because I didn't want to give the dog to somebody I didn't</p> <p>5 know. I mean --</p> <p>6 Q And --</p> <p>7 A I also have a Chihuahua and I had a kitty at the</p> <p>8 same time so --</p> <p>9 Q Sure. And your dad, to be frank, had just got done</p> <p>10 filing for bankruptcy, right?</p> <p>11 A I don't know about that.</p> <p>12 MR. KING: All right. I don't think I have</p> <p>13 any other questions, Mari. Thank you.</p> <p>14 THE WITNESS: Thank you.</p> <p>15 MR. ARNDT: Mari, this is Mark Arndt. I'm</p> <p>16 the attorney for East Winds. I don't have any</p> <p>17 questions for you today. Thanks for your time.</p> <p>18 THE WITNESS: Okay. Thank you guys.</p> <p>19 THE COURT REPORTER: Do you want to advise</p> <p>20 her about reading and signing?</p> <p>21 MR. KING: Mari?</p> <p>22 THE WITNESS: Yeah.</p> <p>23 MR. KING: You have a right to read and sign</p> <p>24 the deposition before it's official. And what that</p> <p>25 means is you review what the person who is licensed</p>

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1 to take everything down, what she's typed up.  
 2 THE WITNESS: Okay.  
 3 MR. KING: You don't get to change the  
 4 content of your answers.  
 5 THE WITNESS: Okay.  
 6 MR. KING: But you can review it, if you  
 7 would like, before it's official. Now, most of the  
 8 time people waive that because the court reporter is  
 9 licensed, independent, trained, certified, by the --  
 10 by the lawyers and judges to take statements so --  
 11 but it's your call. What would you like to do?  
 12 THE WITNESS: What is the difference if I  
 13 sign or don't sign?  
 14 MR. KING: You have to -- there's no  
 15 different in the content of your answers. It's --  
 16 THE WITNESS: Right.  
 17 MR. KING: It's just -- you have to go  
 18 through and review everything and then you have to  
 19 sign off and then you have to send everything back.  
 20 You don't -- I'll be honest with you, over 99  
 21 percent of the depositions I've been at, people  
 22 waive that.  
 23 THE WITNESS: Okay.  
 24 MR. KING: It is out there though. So if you  
 25 do waive it, you just have to say I'll waive it.

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1 THE WITNESS: Okay. I guess I'll waive it.  
 2 I do have one question. Can I send you guys the  
 3 pictures of Marco I have cuddling with kids and I  
 4 have one where I'm like actually physically holding  
 5 him so he can look out the window? Can I send these  
 6 to you guys?  
 7 MR. KING: Sure.  
 8 MR. ARNDT: Yeah. Mari, in fact, as long as  
 9 we've got you on the line, I would like to give you  
 10 an email address if you have the ability to email  
 11 those.  
 12 THE WITNESS: Yeah, that's perfect. Let me  
 13 get it opened up here and let's see. Give me one  
 14 second.  
 15 MR. KING: We can go off.  
 16 (12:03 p.m.)  
 17  
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## C E R T I F I C A T E

1 STATE OF SOUTH DAKOTA )  
 2 :SS  
 3 )  
 4 COUNTY OF MINNEHARA )  
 5

6 I, STACY L. WIEBESIEK, RPR, CSR, Notary Public in and  
 7 for the State of South Dakota, do hereby certify that the  
 8 deposition of MARI PASHAN was by me reduced to machine  
 9 shorthand in the presence of the witness, afterwards  
 10 transcribed by me by means of computer, and that to the best  
 11 of my ability the foregoing is a true and correct transcript  
 12 of the deposition by the witness as aforesaid.

13 I further certify that this deposition was taken at  
 14 the time and place specified in the foregoing caption.

15 I further certify that I am not a relative, counsel or  
 16 attorney for any party, or otherwise interested in the outcome  
 17 of this action.

18 IN WITNESS WHEREOF, I have hereunto set my hand at  
 19 Sioux Falls, South Dakota, on the 6th day of September, 2020.  
 20  
 21  
 22



23 STACY L. WIEBESIEK, RPR, CSR  
 24 NOTARY PUBLIC

25 My Commission expires December 21, 2025.

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<p>1 STATE OF SOUTH DAKOTA ) IN CIRCUIT COURT 2 COUNTY OF YANKTON ) FIRST JUDICIAL CIRCUIT 3 * * * * * 4 TERESA BURGI, INDIVIDUALLY, AND CIV. 19-000261 5 TERESA BURGI, AS GUARDIAN AD LITEM 6 FOR KALEB RAYMOND BURGI, 7 Plaintiffs, 8 vs. 9 EAST WINDS COURT, INC., 10 Defendant &amp; Third-Party Plaintiff, 11 vs. 12 RONALD PASMAN, 13 King Law Firm 14 Sioux Falls, South Dakota 15 August 27, 2020 16 1:00 p.m. 17 * * * * * 18 T E L E P H O N I C 19 D E P O S I T I O N O F 20 Joshuah Eagleman 21 * * * * * 22 APPEARANCES: 23 Mr. David J. King 24 Mr. Kirk Railis 25 Ms. Michelle Miles King Law Firm 101 North Phillips Avenue Sioux Falls, South Dakota 57104 for the Plaintiffs;</p>	<p>1 APPEARANCES: (Continued) 2 Mr. Mark J. Arndt 3 Evans, Haigh &amp; Hinton 4 101 North Main Avenue 5 Sioux Falls, SD 57104 6 for the Defendant &amp; Third-Party Plaintiff. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 INDEX TO WITNESS 2 Examination 3 by Mr. King: P. 5 4 by Mr. Arndt: P. 33 5 INDEX TO EXHIBITS 6 Marked for Identification Offered into Evidence 7 (No Exhibits Marked) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 S T I P U L A T I O N 2 It is stipulated and agreed, by and 3 between the above-named parties through their 4 attorneys of record, whose appearances have been 5 hereinabove noted, that the telephonic deposition of 6 JOSHUAH EAGLEMAN may be taken at this time and 7 place, that is, at the offices of King Law Firm, 8 Sioux Falls, South Dakota, on the 27th day of 9 August, 2020, commencing at the hour of 1:00 p.m.; 10 said deposition taken before Pat L. Beck, Registered 11 Merit Reporter and Notary Public within and for the 12 States of South Dakota and Minnesota; said 13 deposition taken for the purpose of discovery or for 14 use at trial or for each of said purposes; and said 15 deposition is taken in accordance with the 16 applicable Rules of Civil Procedure as if taken 17 pursuant to written notice. Objections, except as 18 to the form of the question, are reserved until the 19 time of trial. Insofar as counsel are concerned, 20 the reading and the signing of the transcript by the 21 witness is waived. 22 * * * * * 23 JOSHUAH EAGLEMAN, 24 called as a witness, being first duly sworn by 25 Mr. David King, deposed and said as follows:</p>

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1 MR. KING: Mark, are you satisfied with that  
2 affirmation?  
3 MR. ARNDT: Yes.  
4 EXAMINATION BY MR. KING:  
5 Q Okay. So, Josh, I'm going to be asking you  
6 questions today which are under oath so they have to  
7 be truthful. Okay?  
8 A All right.  
9 Q Josh, how old are you today?  
10 A Thirteen.  
11 Q You're 13. Okay. So could you tell me your  
12 date of birth?  
13 A 6/25/07.  
14 Q 6/25/07?  
15 A Yeah.  
16 Q Do you know the difference between telling the  
17 truth and telling a lie?  
18 A Yeah.  
19 Q Do you promise to tell the truth today?  
20 A Yeah.  
21 Q No lies; right?  
22 A Yeah.  
23 Q Okay. So I wanted to talk to you a little bit  
24 about September 3rd, 2017, an incident where Marco  
25 bit Kaleb Burgi. Do you remember that day?

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1 grandpa at that trailer?  
2 A Like two years and a half.  
3 COURT REPORTER: A year and a half?  
4 Q (By Mr. King) Did you say three years and a  
5 half or a year and a half?  
6 A Two years and a half.  
7 Q Two years and a half. Okay. Did he have Marco  
8 the whole time?  
9 A My auntie gave him to him.  
10 Q Did you say you actually gave Marco to your  
11 grandpa?  
12 A No. My auntie gave him to my grandpa.  
13 Q What's your auntie's name?  
14 A Marie.  
15 Q Marie. Okay. Why did Marie give your grandpa,  
16 Mr. Pasman, Marco?  
17 A Because Marco kept barking -- (inaudible)  
18 COURT REPORTER: I'm sorry.  
19 Q (By Mr. King) That's okay. Sir, I'm going to  
20 interrupt for just a second. The court reporter is  
21 having a hard time getting your words, so I want to  
22 repeat what you said a little bit.  
23 I thought I heard you say that your auntie  
24 gave Mr. Pasman Marco because she lived in a little  
25 apartment and Marco was barking?

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1 A Yeah.  
2 Q Okay. And what do you remember about that day?  
3 A Well, Kaleb was trying to go and get the  
4 basketball but it was by the -- (inaudible)  
5 Q The court reporter couldn't hear you. Okay.  
6 So could I have you just repeat it slowly?  
7 A Kaleb was trying to go get the basketball but  
8 it was by the dog.  
9 Q He was trying to go get the basketball but it  
10 was by the ball is what you said; right?  
11 A No. It was by the dog.  
12 Q By the dog. By the dog. Okay. Go ahead.  
13 A And then he bent down to get it and then the  
14 dog just started biting him.  
15 Q Okay. And you gave your statement over the  
16 telephone back in June of 2018. Do you remember  
17 that?  
18 A No.  
19 Q Okay. Where they called you on the telephone  
20 and asked you questions about it?  
21 A I don't remember.  
22 Q That's fine. Let me ask you a couple of  
23 questions about Marco. Who owned Marco?  
24 A My grandpa.  
25 Q And how long have you been visiting your

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1 A Yeah. And then the neighbors didn't want that,  
2 so they had to get rid of him.  
3 Q So the neighbors didn't like Marco's barking so  
4 Marie had to get rid of him?  
5 A Yes.  
6 Q Okay. And then what happened?  
7 A And that's it.  
8 Q Okay. And I assume you've been around Marco a  
9 lot of times?  
10 A (Inaudible)  
11 Q I'm sorry, sir. I didn't hear you.  
12 A I wasn't around him that much.  
13 Q You're not around him that much?  
14 A No.  
15 Q Okay. When you're around Marco, does Marco  
16 bark?  
17 A Sometimes.  
18 Q Okay. Is it loud when he barks?  
19 A Not that loud.  
20 Q Okay. Has Marco ever -- does he jump on  
21 people? Did he ever jump up on you?  
22 A What do you mean by that? Did he jump on me?  
23 Q Yeah. Just kind of jump up on you.  
24 A (Inaudible)  
25 Q We're having a hard time hearing you, young

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1 man. Can you say that again?  
2 A He jumped on me because I was playing with him.  
3 Q He jumped on you because you were playing with  
4 him?  
5 A Yeah. Like, I had a rope or something.  
6 Q With a rope. Okay. And when you're playing  
7 with the rope game, you're pulling on one end of the  
8 rope; right?  
9 A No. I'm just letting him pull.  
10 Q You're letting him pull. Did he growl and  
11 stuff?  
12 A No.  
13 Q No. Did he ever bark at people who walked by?  
14 A Not really.  
15 Q A little bit?  
16 A Not really.  
17 COURT REPORTER: I thought he said "not  
18 really."  
19 THE WITNESS: Not really.  
20 MR. KING: Right.  
21 COURT REPORTER: Okay.  
22 MR. KING: I was trying to clarify.  
23 Q (By Mr. King) And so when you were at your  
24 grandpa's house, where was Marco normally kept?  
25 A Well, he was mostly outside, more in the

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1 daytime.  
2 Q Mostly outside in the daytime.  
3 A Yeah. But he came in at, like, four sometimes.  
4 Q He came in at, like, four, you said?  
5 A I don't know. No.  
6 Q No. Okay. Josh, did you ever -- did you ever  
7 walk the dog?  
8 A No.  
9 Q Okay. Did your grandpa walk the dog?  
10 A I don't think so.  
11 Q Yeah. So when the dog was in the house with  
12 your grandpa, where was the dog kept?  
13 A It was just anywhere in the house.  
14 Q Anywhere in the house? All right. Did they  
15 have a kennel or anything inside the house that the  
16 dog slept in?  
17 A No.  
18 Q Okay. And Marco was always kept out front and  
19 he was chained to the hitch of the trailer; is that  
20 right?  
21 A Yeah.  
22 Q Okay. Did you ever see Marco chained up in the  
23 backyard?  
24 A No.  
25 Q Okay. Did Marco -- did it understand commands

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1 like sit or stay? Did it have commands like that  
2 that it understood or not?  
3 A I think he knows, like, sit.  
4 Q Could you say that again?  
5 A I think he knows what sit means, but I don't  
6 know.  
7 Q Okay. All right. So when is the last time you  
8 saw your grandpa, Mr. Pasman?  
9 A Not too long ago. Like a week or something.  
10 Q Did you say like a week ago?  
11 A About two weeks ago.  
12 Q About two weeks ago. Okay. Was Marco a big  
13 dog?  
14 A Not that big.  
15 Q Not that big. Now, there was a basketball  
16 hoop --  
17 A Yeah.  
18 Q -- and you guys used to play basketball there;  
19 right?  
20 A Yeah.  
21 Q Okay. And you guys kind of played basketball  
22 out in the street; is that right?  
23 A Yeah.  
24 Q Okay. And that was kind of a routine thing to  
25 have done. You know, the boys kind of stay out

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1 there and play basketball out on the street?  
2 A Oh, yeah.  
3 Q And sometimes the basketball would bounce into  
4 the yard, wouldn't it?  
5 A Sometimes.  
6 Q And sometimes the basketball would bounce out  
7 in the street or bounce underneath a car; isn't that  
8 right?  
9 A Yeah.  
10 Q Okay. And when the basketball went under a car  
11 or bounced across the street or went up into your  
12 grandpa's -- near your grandpa's trailer, you would  
13 have to go get it; right?  
14 A Yeah.  
15 Q Okay. And you knew Kaleb Burgi, didn't you?  
16 A I didn't know him that much.  
17 Q Right. You don't go to school with him, do  
18 you?  
19 A No.  
20 Q No. What school do you go to?  
21 A You mean, like, right now?  
22 Q Yeah.  
23 A It's summertime, but -- (inaudible)  
24 COURT REPORTER: But what?  
25 Q (By Mr. King) You're going to go where?

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1 A Todd County Middle School.  
2 Q Todd County Middle School. Where is Todd  
3 County Middle School at?  
4 A Mission.  
5 Q Mission. Do you like school?  
6 A Yeah. A little bit.  
7 Q Are you about the same age as Kaleb Burgi?  
8 A I don't know about his age.  
9 Q Okay. Is he a nice kid?  
10 A Yeah.  
11 Q Did you like him?  
12 A Kind of.  
13 Q Yeah. Did your brother like him?  
14 A I don't know.  
15 Q Yeah. And Marco was kept on a chain attached  
16 to the hitch; right?  
17 A Yeah.  
18 Q Okay. In the front of your grandpa's trailer;  
19 right?  
20 A Yeah.  
21 Q And did everybody know that you guys played  
22 basketball there out in the street?  
23 A I don't even know.  
24 Q You don't know. Did anyone ever tell you guys  
25 not to play basketball out in the street?

Page 15

1 A Yeah.  
2 Q Okay. So what did Marco do if another dog came  
3 by?  
4 A Wait. What?  
5 Q How did Marco react if another dog came around?  
6 A He would just go up and, like -- (inaudible)  
7 Q Can you say that again?  
8 A He would try to go up and, like, sniff on them  
9 and, like, try to play with them.  
10 Q I heard you --  
11 MS. MILES: Sniff them.  
12 Q (By Mr. King) I can't tell what you're saying  
13 and neither can the court reporter. Are you on  
14 speakerphone?  
15 A Yeah.  
16 Q Can you take it off speakerphone because we're  
17 really having a hard time hearing you.  
18 A Okay.  
19 Q Are you there?  
20 A Yeah.  
21 Q Who is there in the room with you, Josh?  
22 A Nobody.  
23 Q Okay. Is your mom there?  
24 A No.  
25 Q Is Elijah Sorace there?

Page 14

1 A No.  
2 Q And I think there's a couple of pictures that  
3 were taken after this dog bite and they show a  
4 couple of "Beware of the Dog" signs in front of your  
5 grandpa's trailer. Do you remember seeing those  
6 "Beware of the Dog" signs?  
7 A Yeah. They were always there.  
8 Q They were always there. They'd been up a long  
9 time, hadn't they?  
10 A (No response)  
11 Q Josh?  
12 A Yeah.  
13 Q They'd been up a long time, hadn't they?  
14 A Yeah.  
15 Q Okay. And I think your grandpa testified that  
16 they were up the whole time he had Marco. Were they  
17 up the whole time that Marco was there at that  
18 trailer?  
19 A Yeah.  
20 Q Okay. Were they -- were they clearly visible,  
21 Josh?  
22 A Yeah. People can see.  
23 Q People could see them? Yeah.  
24 A Yeah.  
25 Q Could you see them from the street, Josh?

Page 16

1 A Like right here or being in the house?  
2 Q Well, near you right now.  
3 A No.  
4 Q Okay. Is your grandpa --  
5 A I think he's downstairs.  
6 Q Okay. Is your grandpa there?  
7 A No.  
8 Q Okay. Josh, you were telling us how Marco  
9 would react if another dog came near?  
10 A Yeah.  
11 Q What did you say again?  
12 A Yes.  
13 Q How would the dog react? How would Marco  
14 react?  
15 A Oh, he would go up to them and, like, sniff on  
16 them and he would just, like, jump around, you know,  
17 like, try to play with them.  
18 Q Yeah. Did Marco ever nip at another dog?  
19 A Well, he did because another dog came up behind  
20 him and started attacking him.  
21 Q Really. And what happened in that situation?  
22 A They just were fighting, and then they got  
23 broken up and we put them away.  
24 Q Who broke them up?  
25 A I don't remember.



Page 17

1 Q Did your grandpa break them up?  
2 A No. No, he didn't.  
3 Q Okay. Did Marco ever growl at people?  
4 A No.  
5 Q Okay. So when I look at the statement that you  
6 gave back on June 1st of 2018 when you were at your  
7 grandpa's house, you were asked if Marco was  
8 startled at all before he attacked Kaleb, and you  
9 had said he was not startled. Is that right?  
10 A Yeah.  
11 Q And when -- did you see this whole attack  
12 thing?  
13 A Yeah.  
14 Q Okay. So where were you standing when you saw  
15 it?  
16 A I was, like, in front of the truck. Not, like,  
17 in the truck but in front of the truck.  
18 Q Okay. So you were closer to the street than  
19 you were to your grandpa's trailer?  
20 A Yeah, because we were playing basketball.  
21 Q Right. In your answer you said, "yeah"; right?  
22 A Wait. What?  
23 Q I thought you said that you were near the  
24 street, closer to the street than you were to your  
25 grandpa's trailer.

Page 19

1 wanted it, but then he went down to grab it and then  
2 Marco started biting him.  
3 Q Okay. So the dog was never hit with the  
4 basketball; right?  
5 A Wait. What?  
6 Q Marco was never hit by the basketball, was he?  
7 A No.  
8 Q Okay. What happened after the dog bit Kaleb?  
9 A Well, he just started, and then my grandpa came  
10 out. This whole thing happened when my grandpa went  
11 inside to get coffee.  
12 Q Okay. Did your grandpa normally watch you when  
13 you were outside playing basketball?  
14 A Yeah.  
15 Q Okay. Do you know when your aunt -- your  
16 Auntie Marie, when she had the dog, did she ever  
17 train the dog?  
18 A She trained him a little bit.  
19 Q Did she train him to be, you know, like a  
20 defense dog?  
21 A I don't think so, no.  
22 Q Okay. I looked at a statement -- I looked at a  
23 statement that your grandpa gave the insurance  
24 company and he had --  
25 A I can't hear you.

Page 18

1 A Oh. Yeah, I was.  
2 Q Because you were playing basketball in the  
3 street; is that right?  
4 A Yeah.  
5 Q Okay. And if I understand correctly, you had  
6 played basketball with Kaleb out there at that hoop  
7 several times; right?  
8 A Just about -- (inaudible)  
9 COURT REPORTER: Just what?  
10 Q (By Mr. King) Did you say "Just about,  
11 probably"?  
12 A Yeah.  
13 Q Okay. And if I understand correctly what  
14 happened, a ball bounced up into the yard --  
15 A Yeah.  
16 Q -- as you guys were playing basketball, and  
17 Kaleb went to get the basketball. Is that true?  
18 A Yeah.  
19 Q And then Marco kind of chased him down from  
20 behind. Is that true?  
21 A No, he didn't chase him. No, Kaleb went, like,  
22 right to in front of him because the basketball was  
23 by Marco.  
24 Q Okay.  
25 A It was a flat basketball. I don't know why he

Page 20

1 Q Okay. I'll say it again. I looked at a  
2 statement -- notes from a statement that your  
3 grandpa, Mr. Pasman, had given to the insurance  
4 company, and in it --  
5 (Voices speaking in background.)  
6 Q Are you there?  
7 A Hello.  
8 Q Hello?  
9 A Yeah.  
10 Q Josh? Okay. In that statement, the written  
11 notes, it says he was trained by the owner, trained  
12 to be a leader.  
13 A Who? Marco?  
14 Q Marco, yeah.  
15 A I don't know about that.  
16 Q Okay. Now, if I understand it correctly,  
17 there's no fences up; right?  
18 A No.  
19 Q Okay.  
20 A He was going to put fences up.  
21 Q He was going to put fences up, did you say?  
22 A Yeah.  
23 Q Okay. And how long had that basketball hoop  
24 been there, do you know?  
25 A It had been there for, like, a week or two.

Page 21

1 Q Okay. Because it looks like it's anchored down  
2 with some blocks. Do you remember that?  
3 A Yeah. Kind of.  
4 Q So it doesn't look like it was moved much. Was  
5 it moved?  
6 A No.  
7 Q And how long had you been playing basketball at  
8 your grandpa's?  
9 A Not that long.  
10 Q Who got that basketball hoop, do you know?  
11 A My grandpa's friend gave it to us because he  
12 didn't want it anymore.  
13 Q Oh, okay. And then your grandpa set it up  
14 there?  
15 A Yeah.  
16 Q And you guys liked it and you guys used it and  
17 played with it?  
18 A Yeah.  
19 Q And when I look at the picture taken from the  
20 sheriff, it looks like the basketball hoop is kind  
21 of -- the base part of it is kind of touching the  
22 street. Is that about the truth?  
23 A I don't even remember.  
24 Q Okay.  
25 A I don't remember.

Page 23

1 Q What's his first name?  
2 A Monte.  
3 Q Monte Eagleman. Where does Rachel live?  
4 A She died a couple of weeks ago.  
5 Q She what?  
6 A She died a couple of weeks ago.  
7 Q She died?  
8 A Yeah.  
9 Q I'm sorry to hear that, Josh. So are you  
10 staying with your grandma now?  
11 A Yeah.  
12 Q Okay. What's your grandma's name?  
13 A Norma Sorace.  
14 Q Norma Sorace?  
15 A Yeah.  
16 Q Okay. So where is your dad -- where does your  
17 dad live? Where does Monte live?  
18 A I don't know.  
19 Q You don't see him much?  
20 A No.  
21 Q Okay. And do you spend -- do you live most of  
22 your time with your grandma now?  
23 A Yeah.  
24 Q So do you go to visit your grandpa, Mr. Pasman,  
25 just for --

Page 22

1 Q You know, and there's two little boys in the  
2 picture right by the basketball hoop, and I've been  
3 told that that's you and Elijah.  
4 But my question for you is: Are you older  
5 than Elijah or younger than Elijah?  
6 A I'm younger.  
7 Q You're younger. Okay. So, Josh, who is your  
8 mom?  
9 A Rachel -- (inaudible)  
10 Q Rachel?  
11 A Yeah.  
12 Q What's her last name?  
13 A Eagleman.  
14 Q What was it?  
15 A Eagleman.  
16 Q I'm having a hard time hearing that.  
17 A My last name is Eagleman. Eagleman.  
18 Q Okay. So Rachel's last name is Eagleman, too?  
19 A No. Her name is Sorace.  
20 Q Hers is what?  
21 A Sorace.  
22 Q Could you spell it -- oh, Sorace. S-O-R-A-C-E?  
23 A Yes. It's Sorace, though.  
24 Q Okay. So who is your dad, Josh?  
25 A Monte Eagleman.

Page 24

1 A He sometimes comes and visits us.  
2 Q Oh, okay. When he comes to visit you, did he  
3 bring Marco with him?  
4 A Like, Marco is dead.  
5 Q I know that. But when Marco was alive and your  
6 grandpa -- would he bring --  
7 A Oh, yeah. He'd bring Marco.  
8 Q Okay. And so I'm trying to get a feel, Josh,  
9 of how much time you spend with your grandpa. Do  
10 you spend a couple of weeks there every summer?  
11 A Like, when I lived with him?  
12 Q Yeah. Did you live with him for a while?  
13 A Yeah.  
14 Q Okay. How long did you live with Mr. Pasman?  
15 A Like two years and a half.  
16 Q Okay. And did he have Marco the whole time?  
17 A Well, this happened, like, right when I came  
18 over, kind of.  
19 Q Oh, okay. So you lived with him for a little  
20 while before this dog bite, and then you lived with  
21 him for a couple of years after the dog bite; is  
22 that right?  
23 A Yeah.  
24 Q Okay. Did Mr. -- did your grandpa have a job  
25 at that time?

Page 25

1 A He worked at Walmart, I think.  
2 Q Okay. Who watched Marco when the dog -- when  
3 your grandpa was at Walmart?  
4 A Me and my older brother.  
5 Q Okay. And what did you do to watch him?  
6 A We just kept him in the house, yeah. And we  
7 fed him and stuff. We kept him in the house.  
8 Q Why did you keep him in the house?  
9 A Because we didn't know how to, like -- we  
10 didn't -- I don't know.  
11 Q You didn't know what?  
12 A We didn't know why he kept him in the house.  
13 Q Okay. Were you told to keep him in the house?  
14 A No.  
15 Q Okay. Has your grandpa ever talked with you  
16 about this situation?  
17 A Like, about Marco biting him?  
18 Q Yeah. Biting Kaleb.  
19 A One time.  
20 Q When was that?  
21 A I don't remember, but I know he did.  
22 Q What did your grandpa say?  
23 A Well, he just asked me questions about it  
24 because he was inside.  
25 Q Because what?

Page 27

1 Q Did your grandpa tell you and Elijah to be  
2 careful around Marco?  
3 A No.  
4 Q No? I think Mr. -- your grandpa testified that  
5 he told kids to stay away from Marco, including you  
6 guys. Is that -- is that true or is that not true?  
7 A I don't remember him saying that.  
8 Q Okay. Your grandpa testified that Marco could,  
9 you know, knock Kaleb over. Is that true?  
10 A Probably. I don't know.  
11 Q Where did Marco go to the bathroom at?  
12 A He just went, like, in the front yard and then  
13 we cleaned it up.  
14 Q Okay. Did his -- did Marco's chain reach the  
15 grassy areas next to the driveway?  
16 A No.  
17 Q So when he pooped or he peed, he pooped and  
18 peed on the cement; right?  
19 A Well, he can, like, go to a little grass spot  
20 there -- (inaudible)  
21 Q Can you say that again? We had a hard time  
22 hearing you.  
23 A There was a little bit in the grass where he  
24 can go to the bathroom.  
25 Q Okay. And that was kind of in the side yard in

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1 A He was asking me questions about it because he  
2 was inside.  
3 Q Okay. Did you ever talk to anyone from the  
4 trailer court, Josh, about this situation?  
5 A I don't think so.  
6 Q Did you talk to -- did you talk to the sheriff  
7 about the situation?  
8 A No.  
9 Q All right. Do you think all of the neighbors  
10 knew that your grandpa had Marco?  
11 A Yeah.  
12 Q How would they have known that, Josh?  
13 A Because he's outside all the time.  
14 Q Yeah. And he'd had him for a long time; is  
15 that right?  
16 A My grandpa?  
17 Q Yeah.  
18 A I don't know about that.  
19 Q Okay. Your grandpa testified that Marco was  
20 kind of tough, that he would tear up a stranger. Is  
21 that about the truth of it?  
22 A I don't really know.  
23 Q Okay. Did your grandpa tell kids to stay away  
24 from Marco?  
25 A Yeah.

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1 the front of your grandpa's trailer?  
2 A Yeah. Hello.  
3 Q Yes. I'm just looking at some notes.  
4 A Oh.  
5 Q Was there anybody else that played basketball  
6 there?  
7 A No.  
8 Q Just you and Elijah and Kaleb?  
9 A Yeah.  
10 Q Did any of your neighbors ever complain about  
11 Marco being too loud or anything like that?  
12 A No.  
13 Q No one said anything to you?  
14 A No.  
15 Q Do you know who took the basketball hoop down?  
16 A No.  
17 Q You guys kept playing basketball after this or  
18 not?  
19 A I don't remember.  
20 Q Okay. Do you know anyone from the landlord?  
21 A No. I forgot his name.  
22 Q Was he an older man?  
23 A I think so.  
24 Q Do you remember if his name was Galvan?  
25 A Oh, yeah. Galvan.

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1 Q Do you know Mr. Galvan?  
2 A I didn't know him, but I knew his name.  
3 Q You knew the name. Did you ever talk to him?  
4 A No.  
5 Q Did you ever talk to Mr. Blackburn?  
6 A No.  
7 Q And the basketball hoop and the basketball,  
8 what kind of games did you guys play when you were  
9 playing basketball?  
10 A We didn't play that much. We just threw it  
11 around.  
12 Q You just what?  
13 A We just made shots. That's it.  
14 Q And you had to rebound and stuff like that?  
15 A Yeah.  
16 Q And you tried to see who could make the most  
17 baskets?  
18 A Yeah.  
19 Q And sometimes the ball, after it went through  
20 the net maybe would hit the base of that hoop;  
21 right?  
22 A I don't think it did that.  
23 Q Oh, okay. But sometimes it bounced away?  
24 A Sometimes.  
25 Q Not all the time. Can you think of anything --

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1 Q How did it make you feel?  
2 A I don't know. Like, crazy because I'd never  
3 seen anybody get that -- (inaudible)  
4 COURT REPORTER: Get that what?  
5 Q (By Mr. King) Get that what before?  
6 A I never seen anybody get bit up by a dog  
7 before.  
8 Q Was your grandpa proud of Marco?  
9 A Like what?  
10 Q Was he proud of the dog? Marco?  
11 A Oh, yeah.  
12 Q Yeah. Did Marco help your grandpa feel safe  
13 when he was at home at night?  
14 A Yeah. He said, like, if somebody broke in  
15 Marco would, like, attack them.  
16 Q Somebody broke in and Marco attacked them?  
17 A No. If somebody broke in, Marco would attack  
18 them.  
19 Q Do you believe that's true?  
20 A Yeah.  
21 Q If there was stranger danger or something like  
22 that, Marco would -- was kind of a tough dog and he  
23 would have, you know, defended; right?  
24 A Yeah.  
25 MR. ARNDT: Object. Leading.

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1 A About what?  
2 Q Is there anything else you'd like to tell me  
3 about this dog bite that you think would be  
4 important for me to know?  
5 A No.  
6 Q Okay. Let me glance at something for just a  
7 minute. Okay?  
8 And you were -- you were playing  
9 basketball when Kaleb came up?  
10 A Yeah. He just showed up out of nowhere.  
11 Q And he lived how many houses away -- trailers  
12 away?  
13 A Like three or two, I think.  
14 Q Yeah. So it's somebody you guys saw  
15 frequently?  
16 A I think it was three. What?  
17 Q It's somebody you kids knew and you saw  
18 frequently; right?  
19 A Yeah.  
20 Q Were you ever afraid of Marco?  
21 A No.  
22 Q Did Marco ever wake you up with his barking?  
23 A No.  
24 Q Were you scared when Marco attacked Kaleb?  
25 A No.

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1 Q (By Mr. King) Do you know, was your grandpa  
2 allowed to have Marco at the trailer park?  
3 A Yeah, he was allowed to.  
4 Q Did they -- did your grandpa say, "Hey, you  
5 guys have to hide Marco because he's not allowed in  
6 the trailer park"?  
7 A No.  
8 Q In your opinion, did pretty much everybody  
9 there know he had Marco?  
10 A Yeah.  
11 Q All right. When the attack was occurring, who  
12 notified your grandpa?  
13 A What do you mean?  
14 Q I mean, how did he know about it?  
15 A Oh, we told him.  
16 Q Did you run inside the house and tell him?  
17 A Well, after the dog, like, was attacking, he  
18 came out.  
19 Q You told him the dog was attacking and he came  
20 out?  
21 A After it all happened, like, right after, he  
22 came outside.  
23 Q That's okay. Was there blood on the pavement?  
24 A On the what?  
25 Q On the pavement.

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1 A Like, on the van?  
2 Q Blood? Was there blood on the pavement after  
3 the attack?  
4 A They took pictures of it.  
5 Q And you saw the blood?  
6 A Yeah.  
7 Q Was there a lot of blood?  
8 A No.  
9 COURT REPORTER: "Yeah" or "no"?  
10 Q (By Mr. King) Did you say "yes" or "no"?  
11 A What?  
12 Q I asked you was there a lot of blood and the  
13 court reporter --  
14 A No.  
15 Q There was not. Okay.  
16 (Voices in the background.)  
17 Q (By Mr. King) What was that?  
18 A I was talking to my cousin.  
19 Q Oh, okay.  
20 MR. KING: I don't think I have any more  
21 questions for you, Josh. Thank you.  
22 THE WITNESS: Okay.  
23 EXAMINATION BY MR. ARNDT:  
24 Q Josh?  
25 A Yeah.

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1 A Yeah, but -- yeah.  
2 Q Okay. And obviously nothing happened between  
3 Kaleb and Marco on those previous occasions?  
4 A No.  
5 Q Is that correct?  
6 A Yeah.  
7 MR. ARNDT: Okay. I think that's all the  
8 questions I have for you, Josh. Thank you.  
9 MR. KING: Thanks, Josh. Is your brother  
10 there? Is Elijah there?  
11 THE WITNESS: Not right now.  
12 MR. KING: Josh, I should probably say that you  
13 have the right to read the deposition before it's  
14 official. Most people waive the reading and  
15 signing, and I'm not really sure how that would work  
16 with a minor in the first place, so what would you  
17 like to do with regard to that?  
18 THE WITNESS: Wait. To what?  
19 MR. KING: Let me ask you a different question,  
20 Josh. Do you trust that the court reporter took  
21 down your statement accurately today?  
22 THE WITNESS: No.  
23 MR. KING: Did you say "no"?  
24 THE WITNESS: I don't even know what that  
25 means.

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1 Q Are you still there? Okay. Josh, name is  
2 Mark Arndt. Okay. My name is Mark Arndt. I am an  
3 attorney for the owner of the trailer park which is  
4 East Winds Trailer Court. I have just a couple of  
5 additional questions for you. Okay?  
6 A Yeah.  
7 Q Josh, prior to the date that Marco bit Kaleb,  
8 which I think was September 3rd of 2017, before  
9 that, had you ever seen Kaleb have any interaction  
10 with Marco?  
11 A No.  
12 Q Had Kaleb ever previously teased Marco?  
13 A No.  
14 Q Had Kaleb ever previously played with Marco?  
15 A Well, I don't really know. I never seen him  
16 play with Marco.  
17 Q Okay. And prior to the date that Kaleb was  
18 bitten, had you ever played basketball in the same  
19 location when Kaleb and Marco had been outside?  
20 A Kaleb never came outside after that.  
21 Q Okay. But how about before that? How about  
22 before the date that Kaleb was bitten by Marco?  
23 Were there times before that that you guys would  
24 have played basketball in the same location and  
25 Marco would maybe be outside?

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1 MR. KING: Okay. We're sitting here with a  
2 court reporter who has gone through school and she's  
3 been tested and she's been allowed and certified to  
4 take statements under oath, and she does that for a  
5 living, and I'll tell you that she does it very  
6 well. Do you trust that she's taken down your  
7 statement here today correctly?  
8 THE WITNESS: I guess, yeah.  
9 MR. KING: You do trust that? Okay.  
10 THE WITNESS: Yeah.  
11 MR. KING: You said "yeah"?  
12 THE WITNESS: Yeah.  
13 MR. KING: Okay. Mark, is that satisfactory to  
14 you?  
15 MR. ARNDT: That's probably as good as we're  
16 going to do, David, unless you want to go over the  
17 same thing with his grandmother.  
18 MR. KING: That's true. That's true. Thanks,  
19 Josh, I don't have anything else. Can we go off the  
20 record for just a minute?  
21 THE WITNESS: Yeah.  
22 MR. ARNDT: Sure.  
23 (Discussion off the record.)  
24 (Mr. King speaking with Norma Sorace.)  
25 MR. KING: Ma'am, are you still there?

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1 MS. SORACE: Yes.  
2 MR. KING: We just want to make a quick record.  
3 What was your name again?  
4 THE WITNESS: Norma.  
5 MR. KING: Sorace?  
6 THE WITNESS: Norma, N-O-R-M-A.  
7 MR. KING: And what's your last name, Norma?  
8 THE WITNESS: Sorace.  
9 MR. KING: S-O-R-A-C-E?  
10 THE WITNESS: Yes.  
11 MR. KING: And we were going to take Elijah's  
12 statement here today, but off the record you  
13 informed us that he went into JDC today so he's not  
14 available to give a statement. Is that right?  
15 THE WITNESS: That's right.  
16 MR. KING: Okay. And we had talked about  
17 staying in contact and maybe trying to set this up  
18 for another time, like next week or something?  
19 THE WITNESS: Okay.  
20 MR. KING: Is that --  
21 THE WITNESS: Well, I don't know -- you know.  
22 I don't know when they'll let him out. I haven't  
23 talked to him yet.  
24 MR. KING: Okay. But you'll agree to stay in  
25 touch with us; right?

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1 STATE OF SOUTH DAKOTA )  
2 :SS CERTIFICATE  
3 COUNTY OF LINCOLN )  
4 I, Pat L. Beck, Registered Merit Reporter  
5 and Notary Public within and for the State of South  
6 Dakota:  
7 DO HEREBY CERTIFY that the witness was  
8 first duly sworn by me to testify to the truth, the  
9 whole truth, and nothing but the truth relative to  
10 the matter under consideration, and that the  
11 foregoing pages 1-38, inclusive, are a true and  
12 correct transcript of my stenotype notes made during  
13 the time of the taking of the deposition of this  
14 witness.  
15 I FURTHER CERTIFY that I am not an  
16 attorney for, nor related to the parties to this  
17 action, and that I am in no way interested in the  
18 outcome of this action.  
19 In testimony whereof, I have hereto set my  
20 hand and official seal this 9th day of September,  
21 2020.  
22  
23 Pat L. Beck, Notary Public  
24 Expiration Date: June 11, 2023  
25 Iowa CSR: No. 1185

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1 THE WITNESS: Yes, I do.  
2 MR. KING: Okay.  
3 THE WITNESS: Yes.  
4 MR. KING: All right. Thank you so much.  
5 THE WITNESS: All right. Thank you.  
6 MR. KING: Bye-bye.  
7 THE WITNESS: Bye-bye.  
8 (Witness excused.)  
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<b>A</b>	auntie's (1) 7:13	bounce (3) 12:3,6,7	28:10	16:5
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STATE OF SOUTH DAKOTA ) IN CIRCUIT COURT  
COUNTY OF YANKTON ) :SS FIRST JUDICIAL CIRCUIT

TERESA BURGI, INDIVIDUALLY, AND  
TERESA BURGI, AS GUARDIAN AD LITEM FOR  
KALEB RAYMOND BURGI

Plaintiffs

-vs-

EAST WINDS COURT, INC.

Defendant and Third-Party Plaintiff

-vs-

RONALD PASMAN

Third-Party Defendant

\* \* \* \* \*

DEPOSITION OF

RONALD PASMAN

JUNE 2, 2020

\* \* \* \* \*

APPEARANCES:

KING LAW FIRM  
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Sioux Falls, South Dakota  
BY: MARK J. ARNDT, ESQ.

Counsel on behalf of East Winds Court, Inc.

ALSO PRESENT: John Blackburn

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<p style="text-align: right;">Page 6</p> <p>1 A 1204 Meadow View Road in Yankton.</p> <p>2 Q Could you describe 1204 Meadow View Road in Yankton</p> <p>3 for me?</p> <p>4 A Yeah, it's a trailer home park. You go down around</p> <p>5 six blocks and there's six houses, and my house is on the</p> <p>6 right-hand side on Meadow View Road.</p> <p>7 Q What color is it?</p> <p>8 A It's like a light-colored brown, like tan.</p> <p>9 Q And you pay lot rent?</p> <p>10 A Yes, right.</p> <p>11 Q How much is your lot rent?</p> <p>12 A 165.</p> <p>13 Q 165?</p> <p>14 A Yeah.</p> <p>15 Q Are you current on your lot rent?</p> <p>16 A Sure.</p> <p>17 Q Okay. Do you work anywhere now?</p> <p>18 A No.</p> <p>19 Q Okay. Are you on Social Security retirement?</p> <p>20 A Yeah.</p> <p>21 Q Okay. So do you own this trailer or do you --</p> <p>22 A Yeah, I own it, yeah.</p> <p>23 Q Okay. Is there a -- is there a lien on it from a</p> <p>24 bank or anything?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 8</p> <p>1 A Yeah.</p> <p>2 Q Okay. Who did you buy it from?</p> <p>3 A I don't know. I don't remember. Private party.</p> <p>4 Q Do you remember how much you paid for it?</p> <p>5 A I think it was 5,000.</p> <p>6 Q Okay. Have you ever testified in court before?</p> <p>7 A I'm sorry?</p> <p>8 Q Have you ever testified in court before?</p> <p>9 A Not really.</p> <p>10 Q Have you ever had your deposition taken before?</p> <p>11 A I don't even know what that is.</p> <p>12 Q It's one of these statements, just like today.</p> <p>13 A No.</p> <p>14 Q Are you married?</p> <p>15 A No.</p> <p>16 Q Divorced?</p> <p>17 A No.</p> <p>18 Q Okay.</p> <p>19 A I'm single.</p> <p>20 Q Never married?</p> <p>21 A No.</p> <p>22 Q Do you have children?</p> <p>23 A Yeah.</p> <p>24 Q How many children do you have?</p> <p>25 A Two biological.</p>
<p style="text-align: right;">Page 7</p> <p>1 Q What type of trailer is it, and what year is it?</p> <p>2 A It's a 1980.</p> <p>3 Q 1980?</p> <p>4 A Single-wide, yeah.</p> <p>5 Q Single-wide. Do you know who the manufacturer is?</p> <p>6 A No.</p> <p>7 Q Okay. So when you moved to -- I think you said you</p> <p>8 moved here 12 years ago; is that about right?</p> <p>9 A Yeah, 2010, I think.</p> <p>10 Q Have you always lived at that address?</p> <p>11 A In Yankton. Yeah.</p> <p>12 Q Okay.</p> <p>13 A I had an apartment here too before I moved into the</p> <p>14 trailer court.</p> <p>15 Q How long did you stay in the apartment?</p> <p>16 A About three years.</p> <p>17 Q Three years. What apartment was that?</p> <p>18 A It was 308 1/2 West 2nd Street.</p> <p>19 Q Who owned that?</p> <p>20 A I don't know.</p> <p>21 Q So when you moved into East Winds trailer court, did</p> <p>22 you purchase the trailer and move it there or was it already</p> <p>23 there?</p> <p>24 A No, it was already there, yeah.</p> <p>25 Q Okay. So you bought it from somebody?</p>	<p style="text-align: right;">Page 9</p> <p>1 Q And the two biological children are who?</p> <p>2 A Rachel Sorace and Marie Pasman.</p> <p>3 Q Where does Rachel live?</p> <p>4 A She's in the hospital passing away, my daughter, one</p> <p>5 of my daughters, Rachel. She was in -- drowned saving her</p> <p>6 children from drowning.</p> <p>7 Q I'm sorry to hear that.</p> <p>8 A Yeah.</p> <p>9 Q Did you say Rachel was the one that died?</p> <p>10 A Well, she's still alive but she's bedridden.</p> <p>11 Q Okay. Is Marie the one that died?</p> <p>12 A No, Marie is my last living child, yeah.</p> <p>13 Q Okay. So what hospital is Rachel in?</p> <p>14 A Sioux Falls.</p> <p>15 Q Sioux Falls. Sanford or Avera?</p> <p>16 A I think it's Avera.</p> <p>17 Q How long has she been there?</p> <p>18 A She's been bounced around a little so she was</p> <p>19 probably there for maybe a year now possibly.</p> <p>20 Q Do you have any criminal record at all?</p> <p>21 A No.</p> <p>22 Q No? None in any state?</p> <p>23 A No.</p> <p>24 Q Okay. So tell me -- tell me about the dog Marco.</p> <p>25 A Well, I had him for four years. He's a big dog.</p>

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1 He's, you know, just as big as any German Shepherd, husky,  
2 big-boned, big muscle, big dog. They're all heavy dogs.  
3 They're heavyweight dogs, you know, but he's never had a  
4 problem with anybody the four years I owned him, give or take,  
5 about that age. The mailman used to come up to him and play  
6 with him, even when I wasn't there. I didn't know that  
7 either.

8 One day I came out there and I said, you know that's  
9 a pit bull? He said, yeah, I know. He said, I'm not afraid  
10 of the dog. I said, if you feel comfortable, that's okay, you  
11 can play with him. I said he's not aggressive to you or  
12 nothing so he was never there with anybody. He played with a  
13 lot of other people who would come up to him willingly. I  
14 guess if they're not afraid, they're not afraid. I don't  
15 know, you know, but he never hurt nobody. Never showed any  
16 aggression towards anybody. Always jumped up on everybody  
17 with his big paws, you know, and start licking them and just  
18 wagging his tail. He never had a problem with anybody.

19 I don't get it, but then again, I kind of do get it  
20 because my grandkids told me he teased the dog sometimes  
21 walking by. You know, the dog is not the kind of dog you  
22 tease. Any dog you don't tease. Even my little tiny dog I  
23 got now, a chihuahua -- not a chihuahua. It's a little mini  
24 thing. So I don't know. From what I'm told by my grandson,  
25 the older one, that he went up to the dog. He went up to get

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1 the ball right next to the dog laying right next to his body.  
2 I guess he must have shook the dog or did something over there  
3 that irritated the dog and, you know, scared the dog or  
4 something by going over to him. And that was the end, I guess  
5 you could say. The dog just went off on him. I said, you  
6 can't go up to a dog and scare them. You know, that's any  
7 dog, I guess from what I've seen in my life, raising dogs, you  
8 know. As far as his records and everything, I got his papers  
9 here. I have -- he's current. He never had any diseases. He  
10 never bit nobody. He never hurt nobody, even strangers so,  
11 you know, I don't know what happened there. That's all I do  
12 know, what I've learned.

13 The dog was tied up. Never got loose. Chain was  
14 only -- he was on his chain that he gets hooked on. He gets  
15 hooked on a metal hitch so he couldn't get loose.

16 Q Would you say that again. I didn't hear you.

17 A He would be on a metal hitch, the chain, so he  
18 couldn't get loose, on a hitch, an old ball and hitch. So he  
19 never got loose on that. And he had a body harness on him, a  
20 complete body harness, so he couldn't slip out of that. And  
21 the chain was only like maybe 10, 12 feet long, just enough  
22 for him to walk around. Like I say, he never bothered nobody.  
23 Whether they were young or old, it didn't matter. He never  
24 bothered nobody.

25 And I told that kid, don't come on my property. I

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1 also wanted to let you know, I talked to his mother that same  
2 summer actually, two years ago I believe it was, two summers  
3 ago now. Time flies by. From what I remember now, I talked  
4 to his mother, actually walking from my house to her house  
5 because I wanted to confront her one day about her son walking  
6 on my property. Her exact words, more or less, to me were,  
7 the reason why I let my son run the streets I don't pay  
8 attention to him -- because I told her before she said that to  
9 me -- I told her, I said, I want to let you know I saw your  
10 kid the other day when nobody was home across the street from  
11 my house and my neighbors that I talked to, I saw your son  
12 trying to go in their yard with all the dogs they got. Well,  
13 I happened to stop him from doing that. I said, get out of  
14 their yard. Do not try to go into their yard. I said, you go  
15 back home. Well, he did that. I have no problem with the  
16 kid. He's a good kid. Too bad he's with her.

17 Anyhow, I forgot what I was talking about. Oh, I  
18 was talking to her about -- I was walking from my trailer home  
19 about a house and a half towards hers, and then I turned  
20 around and stopped and I said to her -- I was walking along  
21 the way with her. I says to her, I said, I want to let you  
22 know what I did with your son. I told him to get out of their  
23 yard because he wanted to get a ball in their yard actually,  
24 and I told him to get out of there. Well, he did. Anyhow, I  
25 told her -- I told her about that. She just didn't say

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1 nothing. And then she comes back and says to me, the reason  
2 why I let my son run around and I don't watch him --  
3 Q Go ahead.

4 A Because the other two kids I got in the house have  
5 problems. I don't remember what she told me about them, but I  
6 know they got some kind of diseases too. She says the reason  
7 why I let him run in the streets all day like this and all  
8 night -- because he does. He ran the streets since I've been  
9 living there, since the time he was a little kid until the  
10 time he became this age now -- what is he about 13, 14? He's  
11 been running them streets from the time he was a little kid  
12 because I've been living there now since, what, 2010, I think  
13 it is. And the reason why, he's a problem with the other kids  
14 and they were always fighting over the TV and stuff like that.  
15 And that's why she says I let him run the streets like that.  
16 I said, really? I said, well, you know, one day he's going to  
17 get -- have a problem out there with somebody. I says, and I  
18 have a dog that I have to let go outside to go to the  
19 bathroom. I says, and he just -- as a matter of fact, that  
20 day, I -- let me finish one thing -- and -- and I told her  
21 about the dog, about the neighbor across the street. And she  
22 didn't really care. She didn't acknowledge nothing. She  
23 looks at me, blah, blah, blah and just walks away. No point,  
24 nothing, doesn't care.

25 Well, anyhow, there was something else I wanted to

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1 say too about that. Oh, he was hiding -- from what I was told  
 2 by my grandson that day, he was hiding on the side of the  
 3 truck and they didn't know because I have a truck that's  
 4 parked in the front of the yard, the Dodge Caravan and my car  
 5 is parked. So the two cars are facing out. The trailer home  
 6 is here, towards the back of the property, and the front of  
 7 the trailer is here. The driveway is here. The two cars are  
 8 pointing out to go out to the street, to Highway 50. Well,  
 9 from what I learned, he was on the side of the house -- I  
 10 mean, on the side of the trailer -- I mean on the side of the  
 11 car there, the Caravan, hiding. And I can't see him even if  
 12 I'm sitting on my deck in the front right next to my front  
 13 door. You can't see him unless you're sitting right at the  
 14 edge of the deck, and I don't sit there never. Since I've  
 15 owned the house, I sit right next to my front door into the  
 16 house right here. The trailer end is right here, 14 foot  
 17 wide, whatever, 16.

18 He was hiding on the side of the trailer. I mean on  
 19 the side of the Dodge Caravan, and when I went into the house,  
 20 from what I've learned now, that's when he went and grabbed  
 21 the ball. I'm glad I remembered that. I wanted to write all  
 22 that down. I never did. I'm sick of all of this. And I  
 23 guess that's when he got torn up. Hiding on the side of the  
 24 truck waiting for me to go in the house. That's when I went  
 25 in the house actually, to get a cup of coffee, because I make

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1 coffee in the morning every day. I make my coffee, went in  
 2 the house, go get a cup. Come back outside and sit out there  
 3 again and watch my kids hang out in front, just to sit there  
 4 because I always sit outside when it's nice, you know, and --  
 5 and that's what happened. He was hiding outside waiting for  
 6 me to go in the house and he sure did. He waited and had his  
 7 day for no reason. My grandkid told him that too. He says to  
 8 me, I told him not to go into the house, grandpa, but he  
 9 didn't want to listen. He was hiding and we didn't know where  
 10 he went either. Because they were playing basketball in the  
 11 front, my two grandkids.

12 And when they were playing -- this is the Caravan,  
 13 my car, the front yard. They played basketball right here in  
 14 the front yard. So they can't see him on the side of that  
 15 truck. He's too far away, probably 30 feet away by the time  
 16 they see him, 25 feet away, 30, something like that. And so  
 17 all that stuff has been pertaining to him getting hurt because  
 18 his mother didn't care either, bottom line on that one. And  
 19 now she wants to come back and make good on it. I think she  
 20 should have worried about making good for her son. You're  
 21 lucky I'm not a rich guy, I would take that kid away from her.  
 22 That's about all I know. Yeah, that's all I know that I can  
 23 really offer for information. I don't know anything else,  
 24 unless you got some questions for me.

25 Q Mr. Pasman, when did you retire?

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1 A About two months ago.

2 Q And where did you work before that time?

3 A I was at Hy-Vee for a couple of months, maybe two,  
 4 three months. I said, oh, I'm done working.

5 Q So at the time of this incident --

6 A Yeah.

7 Q -- you know, 2017, were you employed?

8 A I don't know. It's a hard thing to say. I probably  
 9 was. Where was I working? I don't remember. 2017? I don't  
 10 know. I bounced around here a little bit. I don't know where  
 11 I -- If I did work, I don't remember.

12 Q Where did you work before Hy-Vee?

13 A I was there for a couple months, yeah.

14 Q Do you remember where you worked before Hy-Vee?

15 A I don't think I worked for a couple of years. I  
 16 probably didn't work for a couple of years I don't think.

17 Q What was your main job in Yankton?

18 A I didn't really have any. I just went job to job  
 19 when I wanted to, when I wanted to work, when I didn't want to  
 20 work.

21 Q Did you ever work anywhere for more than a year?

22 A Well, I worked these jobs for about two, three years  
 23 some of them, yeah.

24 Q So --

25 A I worked -- I worked at Simple Technologies over

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1 here. I built those scanner guns over there that they sell,  
 2 I built those for about three years, four years, not Simple  
 3 Technologies. What's that place called? Raven Industries. I  
 4 worked at Simple Technologies in New York. After Raven, where  
 5 did I work? Oh, I worked at L & M Radiator too. That was I  
 6 think my first job here was L & M Radiator building them  
 7 radiators, yeah.

8 Q What did you do there?

9 A I did the tubes that go into the machine, into the  
 10 radiators, the big, long tubes. I don't know if you've ever  
 11 seen those radiators.

12 Q I don't know if I have.

13 A They're monsters. They're probably the size of the  
 14 wall right there.

15 Q Wow.

16 A Yeah, big -- they go into the big Caterpillar  
 17 machines and stuff like that, yeah, yeah.

18 Q Was that the first job you had back in 2010?

19 A Yeah, I think so. When I first came here, I had it  
 20 lined up ready to go. I did it before I moved down here. If  
 21 I couldn't get a job here, I wouldn't waste my time. So, you  
 22 know, I came out here, had a job lined up, and they gave me  
 23 the job when I got here.

24 Q So if you worked there for two or three years --

25 A Yeah.



<p style="text-align: right;">Page 18</p> <p>1 Q -- that would put you at about 2012 or 2013?</p> <p>2 A Yeah, probably somewhere around there.</p> <p>3 Q Where did you work after that?</p> <p>4 A I don't know. It might have been Raven Industries</p> <p>5 here. Is that what that place is called that builds the</p> <p>6 scanner guns here?</p> <p>7 Q I don't know.</p> <p>8 A I'm not sure if that's Raven Industries here or not.</p> <p>9 I don't know. That could have been -- no, that's in Sioux</p> <p>10 Falls. What's the place over here called? I don't know what</p> <p>11 the place is called over here. Nobody else knows the name</p> <p>12 either?</p> <p>13 Q What does it do?</p> <p>14 A It builds medical equipment, bar code scanner guns,</p> <p>15 all that stuff over there. What do they do over there? I</p> <p>16 mean, what's the name of the place? I don't know. I can't</p> <p>17 remember the name of the place. Holy Christ. That's how much</p> <p>18 I really care.</p> <p>19 Q So did you ever work at Raven Industries in Sioux</p> <p>20 Falls?</p> <p>21 A Yeah.</p> <p>22 Q Tell me about that.</p> <p>23 A They build bar code scanner guns over there, yeah.</p> <p>24 I worked at that place there and another place over here that</p> <p>25 did that. Yeah, that's all they did over there. I don't know</p>	<p style="text-align: right;">Page 20</p> <p>1 that. It must have been. I don't know. I would have to go</p> <p>2 find the deed on that thing.</p> <p>3 (Exhibit 1 was marked for identification.)</p> <p>4 BY MR. KING:</p> <p>5 Q Ron, this is a copy of a lease that the lawyers for</p> <p>6 East Winds provided me.</p> <p>7 A Was that the one they gave me?</p> <p>8 Q I'm not sure.</p> <p>9 A Yeah, I see. Okay. What about it?</p> <p>10 Q On the front page, where it says Ron Pasman at the</p> <p>11 top --</p> <p>12 A Yeah.</p> <p>13 Q -- is that your handwriting?</p> <p>14 A No, it doesn't look like mine. I don't think --</p> <p>15 that's not my handwriting, no.</p> <p>16 Q If you look at the last page, page 5.</p> <p>17 A Yeah, that's my handwriting.</p> <p>18 Q And that says the lease was 2010.</p> <p>19 A Where does it say that.</p> <p>20 Q The first page at the top, the very top.</p> <p>21 A Okay. Yeah. Wow, it goes -- wait, when did I</p> <p>22 come to Sioux Falls? Maybe 2007. That's when I came to Sioux</p> <p>23 Falls in 2007 then.</p> <p>24 Q Okay.</p> <p>25 A Yeah, that's the only way that could be then. It</p>
<p style="text-align: right;">Page 19</p> <p>1 what they built. I can't remember but -- at Raven Industries</p> <p>2 in Sioux Falls, but I did the bar code scanner guns over</p> <p>3 there.</p> <p>4 Q How long --</p> <p>5 A I was only in Sioux Falls for about a year and a</p> <p>6 half maybe. No, about a year and a month maybe. I don't</p> <p>7 know, somewhere around there. And I left there and went to</p> <p>8 Colorado, I believe. Yeah, I went to Colorado. Yeah, that's</p> <p>9 all they do is build those bar code guns there. I believe</p> <p>10 that's the only job I had there, yeah.</p> <p>11 Q How long did you work there?</p> <p>12 A About a year, yeah.</p> <p>13 Q So that would put us about 2013 or 2014?</p> <p>14 A Probably, yeah, about that time, right around.</p> <p>15 Q So who did you work for after that place?</p> <p>16 A I left there and went to Colorado.</p> <p>17 Q In 2014?</p> <p>18 A Yeah, I think so.</p> <p>19 Q Did you still keep your trailer here?</p> <p>20 A Maybe it wasn't 2000 -- when did I buy the trailer?</p> <p>21 I thought I bought it in 2010. No, I couldn't have. I must</p> <p>22 have bought it in 2014. Yeah, because I can't -- I don't know</p> <p>23 why I'm thinking 2010 because I was in Sioux Falls then.</p> <p>24 Yeah, no, I bought that trailer home in 2013, '14 somewhere</p> <p>25 around there. Yeah, I had to. There's no other answer for</p>	<p style="text-align: right;">Page 21</p> <p>1 has to be 2007 to -- well, I was in Colorado for a year.</p> <p>2 Q Was that before 2010 or after?</p> <p>3 A It must -- It must be before. It has to be before</p> <p>4 2010.</p> <p>5 Q Okay.</p> <p>6 A Yeah, it has to be because I came from Colorado</p> <p>7 to -- yeah, it must have.</p> <p>8 Q So what happened with your --</p> <p>9 A I don't know. Maybe I'm wrong. I don't know.</p> <p>10 Q What happened with your employment at Raven?</p> <p>11 A I just didn't want to live in Sioux Falls.</p> <p>12 Q Yeah.</p> <p>13 A I didn't like it there.</p> <p>14 Q Did I hear -- someone told me I think something</p> <p>15 about a protection order. Was there a protection order issue</p> <p>16 with Raven?</p> <p>17 A Not that I'm aware of. Protection order, from what?</p> <p>18 Q I don't know.</p> <p>19 A I have no idea. I have no idea. That's probably</p> <p>20 why I left there. They were a bunch of nuts. That place was</p> <p>21 a dead end anyhow. I don't even know if they're still in</p> <p>22 business. I wonder if they're still around. They probably</p> <p>23 still are, but I have no idea. If there was, there's probably</p> <p>24 nothing on record so who knows. I don't have no record anyhow</p> <p>25 so, no.</p>

<p style="text-align: right;">Page 22</p> <p>1 Q So if I look at this --</p> <p>2 A Yeah.</p> <p>3 Q -- if Raven Industries was in 2007 --</p> <p>4 A Yep.</p> <p>5 Q -- and then you went to the tube manufacturer in</p> <p>6 2010?</p> <p>7 A Yeah.</p> <p>8 Q And you were there for two to three years, and then</p> <p>9 you worked at the place here in town that's like Raven where</p> <p>10 you make, you know, the guns, and you were there for a year.</p> <p>11 That kind of puts us in '13 or '14. Do you remember why you</p> <p>12 worked after that place?</p> <p>13 A After where, Raven?</p> <p>14 Q After the place in Yankton that made the -- the</p> <p>15 place you couldn't think the name of.</p> <p>16 A Where did I go after there? I have no idea. I</p> <p>17 don't know.</p> <p>18 Q Is there anything that's happened to you that would</p> <p>19 affect your memory?</p> <p>20 A Yeah, I got injured real bad.</p> <p>21 Q When did you get injured real bad?</p> <p>22 A I don't know, but I had a major head injury. I was</p> <p>23 in the hospital. I know that.</p> <p>24 Q When was that?</p> <p>25 A I don't remember. Somewhere in -- out here I know.</p>	<p style="text-align: right;">Page 24</p> <p>1 A Norma.</p> <p>2 Q Norma?</p> <p>3 A She doesn't want to get involved with this.</p> <p>4 Q I understand. I'm just wondering what her last name</p> <p>5 was?</p> <p>6 A It's not important.</p> <p>7 Q You know, part of a deposition is we just need an</p> <p>8 answer. And so I'll just ask you again, please, what's her</p> <p>9 name, last name?</p> <p>10 A All right. Norma Sorace. She's the mother of my</p> <p>11 children.</p> <p>12 Q Thank you. When I look at this lease --</p> <p>13 A Yeah.</p> <p>14 Q -- that you indicated you signed, Exhibit 1 --</p> <p>15 A Yeah.</p> <p>16 Q -- can you look at paragraph 13 on page 3?</p> <p>17 A 13, page 3. Okay. Yeah. And what about it?</p> <p>18 Q Have you had a chance to read the whole paragraph?</p> <p>19 A Let me see here. Tenant assumes all</p> <p>20 responsibility -- yeah, this is all true so far. My dog was</p> <p>21 on my property. The dog is not allowed to run free. That's</p> <p>22 true. Barking dogs, he never was a barking dog. Day or</p> <p>23 night, that's true. Nonvicious pets. He never harmed nobody</p> <p>24 from the time he was a puppy to the day I owned him. There's</p> <p>25 nothing wrong with that, right? I guess everybody knew I had</p>
<p style="text-align: right;">Page 23</p> <p>1 Q Was it a work comp claim?</p> <p>2 A Huh?</p> <p>3 Q Was it a work comp claim?</p> <p>4 A No.</p> <p>5 Q No. You don't remember what year that was?</p> <p>6 A I'm trying to think. I remember I hit my head on a</p> <p>7 steel beam. Where the hell was that steel beam? It was</p> <p>8 probably on my trailer. It was probably the steel beam on my</p> <p>9 trailer. That's what I think. I don't remember where it was</p> <p>10 even. That's going back a long time ago. Where the hell was</p> <p>11 the operation at? I don't know. I always had a bad memory</p> <p>12 anyhow, even when I was in school.</p> <p>13 Q Did you ever go to college?</p> <p>14 A Yeah.</p> <p>15 Q What college did you go to?</p> <p>16 A Suffolk County Community College.</p> <p>17 Q Did you get a degree?</p> <p>18 A I was shy four classes. I didn't want to finish up.</p> <p>19 Q What was your major in?</p> <p>20 A General studies, liberal arts. I only went for two</p> <p>21 years, yeah. I went to electronics school. That's what my</p> <p>22 major was.</p> <p>23 Q So who's the mother of your daughters?</p> <p>24 A She lives out in Rosebud.</p> <p>25 Q What's her name?</p>	<p style="text-align: right;">Page 25</p> <p>1 a dog. The whole neighborhood knew I had a dog. They came</p> <p>2 over with him every day. That's true. (Unintelligible.)</p> <p>3 THE COURT REPORTER: Ron, I can't understand</p> <p>4 you. I need you to speak clearly and loud, please.</p> <p>5 THE WITNESS: We're on number 13.</p> <p>6 THE COURT REPORTER: I don't have it in front</p> <p>7 of me.</p> <p>8 THE WITNESS: The tenant will not -- the</p> <p>9 tenant will have to purchase, at the tenant's own</p> <p>10 expense, a muzzle to keep it -- don't bark. Prevent</p> <p>11 barking. All right. So what about it?</p> <p>12 BY MR. KING:</p> <p>13 Q You have had a chance to review that paragraph?</p> <p>14 A Yeah.</p> <p>15 Q And you had Marco?</p> <p>16 A Yep.</p> <p>17 Q And you've had Marco since Marco was a puppy. Did I</p> <p>18 hear you say that?</p> <p>19 A Right.</p> <p>20 Q Have there been any other owners of Marco in his</p> <p>21 lifetime?</p> <p>22 A Yeah, they had a -- no. There was plenty of other</p> <p>23 pit bulls there too, by the way, a lot of them at that time</p> <p>24 they had over there.</p> <p>25 Q In the trailer park?</p>

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1 A Yeah.  
 2 Q Okay.  
 3 A Yeah.  
 4 Q So --  
 5 A The only reason I got one was to protect myself.  
 6 That's why I had one because I figured any dogs want to come  
 7 around and try to bite me like that, if I had my dog there,  
 8 he'll tear them up. I ain't playing around and getting killed  
 9 from nobody either.  
 10 Q I can't hear you.  
 11 A I'm saying that's why I got the dog, to protect  
 12 myself. You know, keeping my house from danger, you know. I  
 13 live by myself, you know. I'm not 20 years old no more.  
 14 Q So who did you buy Marco from?  
 15 A He was given to me.  
 16 Q By whom?  
 17 A My daughter.  
 18 Q Which daughter?  
 19 A My daughter Marie.  
 20 Q How long did Marie have the dog before you did?  
 21 A Just enough weeks to get him healthy, just enough to  
 22 take him to the vet or whatever she had to do, you know, to  
 23 get him cleaned up.  
 24 Q Where did she get him from, like a pit bull rescue?  
 25 A I don't know. I don't know.

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1 Q Well, you mentioned that she had to get him cleaned  
 2 up.  
 3 A You know, his shots. He was a puppy.  
 4 Q Where did Marie live at that time?  
 5 A I don't know, probably with her mother.  
 6 Q Out in Rosebud?  
 7 A Probably, yeah.  
 8 Q So how old was Marco when you got him -- is Marco a  
 9 boy or a girl?  
 10 A A boy.  
 11 Q A boy. Okay. How old was Marco when you got him?  
 12 A I don't know. A puppy. Probably a few weeks. I  
 13 don't know, a few months.  
 14 Q In September of '17, how old was Marco?  
 15 A I don't remember. I don't know that.  
 16 Q Was Marco about five years old?  
 17 A No, he was never -- I don't know if he was that old.  
 18 It might have been only four or five. Maybe he was close to  
 19 that age. I'm not sure.  
 20 Q So what vet did you take Marco to?  
 21 A I don't know. I don't know the name of it. It's in  
 22 Yankton. I can find out. That's no problem.  
 23 Q Did you only take him to one place or more than one?  
 24 A Right, one place, I'm pretty sure.  
 25 Q What was Marco's temperament like?

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1 A Not much. He would just sit outside and just lay  
 2 down actually and go to sleep out there. That's all he would  
 3 do. I never had to worry about him. He never made a noise,  
 4 never barked, never did nothing. He just went out there and  
 5 laid down and sleep. A big dog, you know, he's not -- I mean,  
 6 the neighbor down the street has a monster dog right now, and  
 7 he's always looking in my yard, always looking like he wants  
 8 to come get that little dog I got so I'm out there now all the  
 9 time with the dog I got when he's outside because I'm afraid  
 10 that big dog out there is going to come charging through that  
 11 fence that they put up because it's not chain link. It's some  
 12 kind of wire mesh thing and it's -- I know that big, monster  
 13 dog can tear it down no problem. He doesn't know yet how  
 14 to -- he never jumped on it yet because I watch him, but he's  
 15 going to do it one day, only a matter of time. It's a St.  
 16 Bernard or great dane, St. Bernard, something like that. It's  
 17 a big, big, big dog.  
 18 Q Do you know if Marco was purebred?  
 19 A I don't know. That I don't know. I'm sure if you  
 20 ask a vet they'll probably say maybe, yeah.  
 21 Q So when you got him from Marie, was it a gift to  
 22 you?  
 23 A Yeah.  
 24 Q So you didn't have to pay for it -- for him?  
 25 A No.

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1 Q And I think you testified that everyone knew that  
 2 you had the dog, right?  
 3 A Yeah, that's right, the whole neighborhood knew.  
 4 Q The whole neighborhood?  
 5 A People used to play with the dog. They would come  
 6 over and pet him because they liked him a lot. That's right.  
 7 Q And you had him with you for that at least four-year  
 8 period, and during that four-year period, you never gave him  
 9 to somebody else for a while to watch?  
 10 A Never.  
 11 Q You always had him?  
 12 A (indicating.)  
 13 Q Okay. So you've read the lease and you feel that  
 14 Marco was in compliance with paragraph 13?  
 15 A Yeah, 100 percent.  
 16 Q And did Mr. Blackburn ever talk to you about the  
 17 dog?  
 18 A Never, nobody.  
 19 Q Did Ron Galvan know about the dog?  
 20 A Everybody knew about it. Yeah, even he came over to  
 21 the dog and played with the dog. The mailman played with the  
 22 dog. I told everybody it's a pit bull, and they said, we  
 23 know. Didn't phase anybody.  
 24 Q And I think I saw some big beware of the dog signs  
 25 out in front.

<p style="text-align: right;">Page 30</p> <p>1 A Yeah, I had dog signs up there and everything, yeah.</p> <p>2 Q How long had those beware of the dog signs been up?</p> <p>3 A For as long as the house has been there, since I --</p> <p>4 well, since I had the dog there.</p> <p>5 Q So for four years?</p> <p>6 A Uh-huh, yeah.</p> <p>7 Q Now, did you keep the dog -- was there a kennel in</p> <p>8 the back?</p> <p>9 A I kept -- he was in my house 24 hours a day unless</p> <p>10 he had --</p> <p>11 Q When he wasn't in your house, he was chained out</p> <p>12 front to the hitch?</p> <p>13 A Yeah, yep.</p> <p>14 Q So he wasn't kept in the back yard?</p> <p>15 A No. There is no back yard there. I don't got a</p> <p>16 fence back there, you know.</p> <p>17 Q And there's no kennel?</p> <p>18 A No, no, I don't need one.</p> <p>19 Q And there was no doghouse?</p> <p>20 A No.</p> <p>21 Q So when you went to work, what did you do with the</p> <p>22 dog?</p> <p>23 A He stayed in the house.</p> <p>24 Q Okay. Was he in a crate?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 32</p> <p>1 A Not that I can remember. Hell, no. No way.</p> <p>2 Q I was provided by the insurance company some notes</p> <p>3 of a recorded statement.</p> <p>4 A That's not admissible --</p> <p>5 Q What's that?</p> <p>6 A -- as far as I'm concerned. That's not legal, is</p> <p>7 it?</p> <p>8 (Exhibit 2 was marked for identification.)</p> <p>9 BY MR. KING:</p> <p>10 Q I'll ask you if you can look at that. It's marked</p> <p>11 as Exhibit 2.</p> <p>12 A That's not my handwriting on any of that, that's for</p> <p>13 damn sure. I don't know what to tell you this is. This is</p> <p>14 all bogus to me. I don't want to even read that. That's a</p> <p>15 waste of time as far as I'm concerned. That ain't nothing I</p> <p>16 have done.</p> <p>17 Q At the top it references a claim number.</p> <p>18 A I don't care what it references.</p> <p>19 Q And then it says interviewer Collin Godfrey.</p> <p>20 A I have no idea.</p> <p>21 Q And then --</p> <p>22 A What are all those notes again?</p> <p>23 Q Well, I'm just trying to go over the top. I'm not</p> <p>24 down to the notes yet.</p> <p>25 A 2010, 2013, I have no idea what that means, what</p>
<p style="text-align: right;">Page 31</p> <p>1 Q No?</p> <p>2 A He ran the house.</p> <p>3 Q He ran the house?</p> <p>4 A Yeah.</p> <p>5 Q And he never had accidents and that kind of stuff?</p> <p>6 A In the beginning he did, until I trained him, yeah.</p> <p>7 He learned -- he was one the smartest dogs I ever had</p> <p>8 actually.</p> <p>9 Q How many dogs have you had?</p> <p>10 A One besides a German Shepherd probably to that many,</p> <p>11 many years ago when I was a young kid.</p> <p>12 Q So did Marco ever have any formal training or</p> <p>13 anything like that?</p> <p>14 A Not really. I'm the one who trained him.</p> <p>15 Q How did you train him?</p> <p>16 A Talking to him, holding him, making him do what I</p> <p>17 tell him to do. He would do it. He was smart. Like I say,</p> <p>18 he was probably the smartest dog I ever saw. That's a fact.</p> <p>19 Q So did you give a statement to the insurance company</p> <p>20 for East Winds?</p> <p>21 A (Indicating.)</p> <p>22 Q Never?</p> <p>23 A Not that I'm aware of. You mean about this dog</p> <p>24 thing?</p> <p>25 Q Yeah.</p>	<p style="text-align: right;">Page 33</p> <p>1 that is. Pit bull, current shots. I have no idea. Maybe I</p> <p>2 did talk to somebody; maybe I didn't. I have no idea. Not as</p> <p>3 far as I'm concerned. I don't remember. When was this, 2018?</p> <p>4 3/23/2000. I have no idea. I have no idea.</p> <p>5 Q So according to this date it was taken on 3/23 of</p> <p>6 '18 which would have been about six months later.</p> <p>7 A I have no idea.</p> <p>8 Q Do you remember anybody going out to your house and</p> <p>9 talking with you about it?</p> <p>10 A No.</p> <p>11 Q Do you remember providing them pictures of your dog?</p> <p>12 A Heck, no. Hell, no. They're lucky I didn't have</p> <p>13 the dog then. They wouldn't be coming on my property. I</p> <p>14 would tell them no.</p> <p>15 Q And the recorded statement, the notes, list your</p> <p>16 name as Ron Pasman and your date of birth as 12/28/56.</p> <p>17 A Yeah.</p> <p>18 Q And it identifies your address as 1204 Meadow View</p> <p>19 Road, Yankton.</p> <p>20 A Yeah.</p> <p>21 Q Is that in the city limits or not?</p> <p>22 A No.</p> <p>23 Q And, you know, at the end of it it says something</p> <p>24 about GEICO. Did you have -- do you have insurance on your</p> <p>25 trailer?</p>

<p style="text-align: right;">Page 34</p> <p>1 A No.</p> <p>2 Q Have you ever had insurance on the trailer?</p> <p>3 A Never. It ain't worth it. It's not worth</p> <p>4 nothing -- enough to have insurance on it.</p> <p>5 Q Who insured your cars?</p> <p>6 A GEICO.</p> <p>7 Q GEICO. And your agent for GEICO is who?</p> <p>8 A No idea.</p> <p>9 Q Is it a local person?</p> <p>10 A No. Telephone.</p> <p>11 Q Telephone?</p> <p>12 A Uh-huh.</p> <p>13 Q So the sheriff was out there that day. Do you</p> <p>14 remember that?</p> <p>15 A Yeah, that's right, that's right. Yeah, I remember</p> <p>16 that. I can't forget that.</p> <p>17 Q Did you talk to the sheriff?</p> <p>18 A I know my grandkids did.</p> <p>19 Q Who are your grandkids?</p> <p>20 A Elijah and Josh.</p> <p>21 Q So it's Elijah Kan Sorace. Is that his name?</p> <p>22 A Elijah Kan Sorace.</p> <p>23 Q Okay. Where does Elijah live?</p> <p>24 A He lives with his grandmother now.</p> <p>25 Q Okay. Where is that at?</p>	<p style="text-align: right;">Page 36</p> <p>1 Q Received a report of a dog bite --</p> <p>2 A Okay.</p> <p>3 Q -- at 1204 Meadow View Road from Ronald Pasman.</p> <p>4 Does that sound about right?</p> <p>5 A Yeah, everything here is correct, right.</p> <p>6 Q I arrived and spoke with Pasman --</p> <p>7 A Yeah.</p> <p>8 Q -- who stated that he had just let his dog</p> <p>9 outside --</p> <p>10 A Yeah.</p> <p>11 Q -- and tied him up.</p> <p>12 A Yeah.</p> <p>13 Q That's true, right?</p> <p>14 A I guess so. If the police wrote it, I must have</p> <p>15 told them this unless -- so if I see something that's not</p> <p>16 right, I'll know.</p> <p>17 Q Pasman stated that he went inside to get a cup of</p> <p>18 coffee and heard a bunch of noise outside.</p> <p>19 A Yeah, I guess so.</p> <p>20 Q Pasman said that once he got outside, he realized</p> <p>21 that his dog had bitten someone.</p> <p>22 A Yeah.</p> <p>23 Q Pasman said that he saw the dog was still tied up</p> <p>24 and he asked his grandson what happened. Sound about right?</p> <p>25 A I guess, yeah.</p>
<p style="text-align: right;">Page 35</p> <p>1 A Rosebud.</p> <p>2 Q Rosebud.</p> <p>3 A Yeah.</p> <p>4 Q What about Joshua King Eagleman?</p> <p>5 A Yeah, he lives there too, yeah.</p> <p>6 Q Okay. Now, according to the sheriff's report, it</p> <p>7 says received a report of a dog bite at 1204 Meadow View Road</p> <p>8 from Ronald Pasman.</p> <p>9 A Uh-huh.</p> <p>10 Q Did you call the police?</p> <p>11 A Yeah, I guess. I don't know.</p> <p>12 Q Okay. Do you remember it at all?</p> <p>13 A I remember the cops being out there. I don't know</p> <p>14 who called the police. It must have been me. I don't see who</p> <p>15 else would have.</p> <p>16 (Exhibit 3 was marked for identification.)</p> <p>17 BY MR. KING:</p> <p>18 Q Sure.</p> <p>19 A I don't know.</p> <p>20 Q So I've marked as Exhibit 3 the Yankton County</p> <p>21 Sheriff's report, and I just thought I would spend a couple</p> <p>22 minutes going through it with you.</p> <p>23 A Yeah.</p> <p>24 Q If you look at the top of page 2.</p> <p>25 A Yeah.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q Pasman then called 911 as he could not find the</p> <p>2 child that was bitten.</p> <p>3 A Right. No, that's not true. He was outside right</p> <p>4 there.</p> <p>5 Q The kid was right there and you saw him?</p> <p>6 A I think he was -- wait, no. No, he wasn't there.</p> <p>7 That's right. He already took off running.</p> <p>8 Q The next sentence said, Pasman said that his dog</p> <p>9 Marco is a four or five-year-old pit bull --</p> <p>10 A I guess so.</p> <p>11 Q -- is that true?</p> <p>12 A I guess. He's around this age. I don't know what</p> <p>13 he actually ever was. He was around four or five years old.</p> <p>14 I'm not sure if it's off a year or -- but he was around that</p> <p>15 age. He must have been.</p> <p>16 Q Pasman said that the dog belonged to his daughter?</p> <p>17 A Right.</p> <p>18 Q But that she is dying and gave Marco to him to --</p> <p>19 A No, that's the wrong daughter. He got my daughters</p> <p>20 mixed up. It was my younger daughter Marie.</p> <p>21 Q Okay. Pasman said that Marco is up-to-date on his</p> <p>22 shots through Animal Health Clinic.</p> <p>23 A Yeah.</p> <p>24 Q Do you remember who the vet was?</p> <p>25 A No, he's here local though.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q Pasman said Marco is up-to-date on his shots through 2 Animal Health Clinic. 3 A I guess so. Yeah, he's up-to-date, that's for sure. 4 Q Pasman said he has told the kid to stay away from 5 Marco many times in the past. 6 A That's right. Yep, his mother didn't give a damn. 7 Q Why is that? Why did you tell him to stay away from 8 Marco? 9 A I didn't want him near my house. He doesn't belong 10 here. He always tried to come over and take my grandkids' 11 basketballs. I told him to stay off my property. I got a dog 12 here and you're going to end up getting hurt. I said, I want 13 you off my property. I don't want you on my property. If you 14 want something, you wait until my kids come outside, you tell 15 them and they'll help you. I said, you don't come on my 16 property. You don't belong here. I said, go home. 17 Q If Marco wasn't a danger to anybody and you never 18 saw him be dangerous or vicious, what did Kaleb have to fear 19 from Marco? 20 A Because I don't want him on my property. I never 21 let nobody on my property. That's the bottom line. I don't 22 want nobody here. There's too many thieves out here in 23 Yankton. This place is a dead end. What, you kidding me? 24 You've got more thieves here than you can have on Goddamn 25 Rikers Island. I see what goes on out here.</p>	<p style="text-align: right;">Page 40</p> <p>1 A That's what you should do, if you want to 2 interrogate, I suggest go ask every neighbor on that block 3 what that dog was like and you'll find your real answers out. 4 Q Signs posted -- 5 A You want to find the truth about her. You want to 6 find the truth about that lady, about how she was? I heard 7 she's a drunk too. I heard a lot about her. Okay. What else 8 did you want to ask? 9 Q Well, Pasman pointed out that there was two beware 10 of dog signs -- 11 A Yeah. 12 Q -- posted on the front steps right next to where 13 Marco was tied up. 14 A Yeah, on the front porch, right. 15 Q And those had been up the entire time you had Marco? 16 A That's right. 17 Q Pasman said that Marco was chained to the hitch of 18 the trailer house and that he's never gotten away. 19 A That's right. 20 Q I took digital pictures of the signs, blood on the 21 ground where the dog bite occurred -- 22 A Okay. 23 Q -- and the chain used to tie Marco up. 24 A Right. 25 Q I told Pasman that Marco should be quarantined and</p>
<p style="text-align: right;">Page 39</p> <p>1 Q Are you a gun owner? 2 A You got a lot of thieves here. I don't want nobody 3 on my property. 4 Q Are you a gun owner? 5 A Huh? 6 Q Are you a gun owner? 7 A What is that? 8 Q A gun owner? 9 A Oh, no, no. 10 Q Pasman pointed out that there are two beware of dog 11 signs -- 12 A That's right. 13 Q -- posted on the front steps right next door to 14 where Marco was tied up. 15 A That's right. You have to be blind to not see them. 16 Q You have to be blind to not see them? 17 A That's right. 18 Q Everyone saw those signs? 19 A That's right. As far as I'm concerned, they did. 20 Q And the signs were -- 21 A You have to ask the neighborhood. 22 Q What's that? 23 A You'll have to go around and ask everybody if you 24 really want to know. 25 Q The signs posted --</p>	<p style="text-align: right;">Page 41</p> <p>1 observed for ten days, and to get to this office a copy of the 2 vaccinations for Marco. 3 A Okay. Yeah. I guess they got the vaccination. 4 They did. I know they did, yeah. 5 Q I spoke with Elijah Sorace and Joshua Eagleman -- 6 A Right. 7 Q -- grandchildren of Pasman. Elijah stated that he 8 was sitting on the front steps of the residence. Do you have 9 front steps of your residence? 10 A Yeah. 11 Q Where are they? 12 A Well, they was there until I was building a house 13 and now they're gone, but at the time, there was probably 14 steps there or something there. He was sitting on blocks, 15 cement blocks or steps or something. 16 Q Yeah, when I look at the pictures that they 17 attached, there are no steps. There are no steps -- 18 A Well, I had been in the process of building it and 19 stuff. I could have been doing a lot of work at the time. 20 Q And a kid named Kaleb was walking towards him? 21 A Uh-huh. 22 Q Elijah stated that he told Kaleb to stay away from 23 the house as the dog was outside. 24 A Yeah. 25 Q So Elijah was trying to warn Kaleb?</p>

<p style="text-align: right;">Page 42</p> <p>1 A Yeah, it looks like it. It looks like it.</p> <p>2 Q Warn him that the dog was dangerous, right?</p> <p>3 A Uh-huh.</p> <p>4 Q Is that a yes?</p> <p>5 A No, I'm not saying that dog is dangerous. Where</p> <p>6 does that say that? What did he say again?</p> <p>7 Q Elijah --</p> <p>8 A He was sitting on the front steps of the residence.</p> <p>9 Kaleb came walking over, right. Elijah says he told Kaleb to</p> <p>10 stay away, right.</p> <p>11 Q Stay away as the dog was outside?</p> <p>12 A The dog was outside, yeah, okay. (Unintelligible)</p> <p>13 THE COURT REPORTER: Ron, I need you to speak</p> <p>14 slow and clear, please. I don't have the document</p> <p>15 in front of me.</p> <p>16 THE WITNESS: Elijah said that Kaleb told him</p> <p>17 that he will do whatever he wants and he kept</p> <p>18 walking closer. Okay. And what about it?</p> <p>19 BY MR. KING:</p> <p>20 Q Well, Elijah stated that he told Kaleb to stay away</p> <p>21 from the house as the dog was outside.</p> <p>22 A Yeah, right, so -- okay.</p> <p>23 Q But -- and you told me that Elijah warned him, true?</p> <p>24 A Yeah.</p> <p>25 Q And Elijah warned Kaleb specifically, hey, that dog</p>	<p style="text-align: right;">Page 44</p> <p>1 Q Elijah said that Kaleb bent down to pick up a</p> <p>2 basketball next to Marco --</p> <p>3 A Uh-huh.</p> <p>4 Q -- and Marco bit him in the face.</p> <p>5 A Yeah, okay. Well, he probably scared the dog.</p> <p>6 Q Right. But you never saw that because you were</p> <p>7 inside?</p> <p>8 A I was inside getting a cup of coffee for the two</p> <p>9 minutes that took place, that's right.</p> <p>10 Q Elijah said that Kaleb stepped to the side but did</p> <p>11 not get back far enough, as Marco could still reach him and</p> <p>12 was now standing up?</p> <p>13 A Okay.</p> <p>14 Q Do you know anything about that?</p> <p>15 A No.</p> <p>16 Q Elijah said that Marco bit Kaleb several times?</p> <p>17 A Okay. Dogs are fast when they bite. That's a fact.</p> <p>18 Q I spoke with Joshua, who said he was near the van</p> <p>19 parked in the driveway, and he saw Kaleb walk up to the</p> <p>20 residence. Joshua said that Kaleb grabbed the ball near</p> <p>21 Marco and Marco jumped up on him and bit him in the face.</p> <p>22 A And I heard he was hiding on the side of the truck.</p> <p>23 That's what Joshua said, right?</p> <p>24 Q Well, no, it doesn't say anything like that.</p> <p>25 A I said I spoke to Joshua who said he was near --</p>
<p style="text-align: right;">Page 43</p> <p>1 is dangerous?</p> <p>2 A Yeah. Well -- he said that in here?</p> <p>3 Q No.</p> <p>4 A Oh, so -- so what are you saying that for?</p> <p>5 Q Well, why did he warn him?</p> <p>6 A Because he probably didn't want the dog to jump on</p> <p>7 him.</p> <p>8 Q Because the dog was a jumper?</p> <p>9 A The dog gets up, he's a big dog, you know, he can</p> <p>10 knock him down. It's a big dog. A big dog gets up, he'll</p> <p>11 knock me down. I mean, you know.</p> <p>12 Q So Kaleb was -- Kaleb is kind of a small kid, isn't</p> <p>13 he?</p> <p>14 A Well, a kid is a kid, sure, he's small.</p> <p>15 Q But he's small for his age, right?</p> <p>16 A No, he's not -- he's normal sized.</p> <p>17 Q Normal sized?</p> <p>18 A Yeah.</p> <p>19 Q Is Kaleb of normal intelligence?</p> <p>20 A I really can't be a judge of that.</p> <p>21 Q Have you talked to Kaleb?</p> <p>22 A Yeah, he's all right.</p> <p>23 Q You never noticed any problem?</p> <p>24 A Not in the beginning, no, not until his mother came</p> <p>25 out and told me.</p>	<p style="text-align: right;">Page 45</p> <p>1 who said that he was near the van parked in the driveway and</p> <p>2 saw Kaleb walk up to the residence. Oh, okay. He was on the</p> <p>3 side of the driveway or -- I mean, on the side of the van or</p> <p>4 was Kaleb on the side of the van? He saw Kaleb walk up to the</p> <p>5 residence. So Kaleb walked up to the residence.</p> <p>6 Q Well, it doesn't say anything about him hiding, does</p> <p>7 it?</p> <p>8 A No, it doesn't.</p> <p>9 Q And you had previously mentioned, hey, you thought</p> <p>10 you --</p> <p>11 A Well, I thought that's what I heard. I don't know.</p> <p>12 Q So you're not sure, are you?</p> <p>13 A I guess I'm not sure.</p> <p>14 Q Yeah. I went to --</p> <p>15 A Unless he was hiding on the side at one time. I</p> <p>16 don't know. He could have been on the side of the truck too.</p> <p>17 I don't know.</p> <p>18 Q Yeah, you just don't know?</p> <p>19 A I don't know. Nobody knows. The only person that</p> <p>20 knows is Kaleb himself.</p> <p>21 Q I went to ASHH and spoke with Teresa Burgi, mother,</p> <p>22 who stated that her son Kaleb, 12, was outside playing and</p> <p>23 came home bleeding.</p> <p>24 A Yeah, she let him run the streets morning to night</p> <p>25 until it was dark every night. That's right.</p>

<p style="text-align: right;">Page 46</p> <p>1 Q Burgi said that she learned that he was bitten by a 2 dog. 3 A Uh-huh. 4 Q So on page 3, I'll have you turn -- 5 A Yeah, okay. 6 Q -- about the middle of the part of the page. It 7 says supporting narrative by Steven Wuebben. 8 A Okay. Who is that? That's a -- animal clinic. 9 Q On 9/8/17, I met with Ron Pasman and his pit bull at 10 the Animal Health Clinic on Whiting Drive. Ronald contacted 11 Chief Deputy Mike Rothschild earlier in the day and stated 12 that he wished to have the dog euthanized. Why did you want 13 the dog euthanized? 14 A The police told me that's the law. 15 Q So you didn't want the dog euthanized? 16 A What for? 17 Q Ronald walked the dog into the clinic and the exam 18 room where a tranquilizer was administered. Ronald signed a 19 form provided by Animal Health Clinic giving them permission 20 to euthanize the dog. 21 A Okay. 22 Q If you continue on, the next page, I think that's a 23 picture of Kaleb. Are those bites consistent with what you 24 observed on Kaleb? 25 A I don't know. I never saw the bites. I never saw</p>	<p style="text-align: right;">Page 48</p> <p>1 Q Those are your grandkid? 2 A Yeah. 3 Q And how old were they at that time? 4 A I don't know, probably around 10, 11, 12. 5 Q So they were about Kaleb's age? 6 A 14. I don't know. Huh? 7 Q They were about Kaleb's age? 8 A Yeah. Actually, yeah. 9 Q So who owned that basketball hoop? 10 A I don't know. I don't know. Someone put it there 11 for my grandkids. 12 Q It wasn't yours? 13 A No. Someone put it there. Gave it to my kids to 14 use. I don't know where they got it. 15 Q So who placed it right at that spot? 16 A I have no idea. 17 Q When your grandkids played -- played basketball, 18 they played on the street, right? 19 A Yeah, right there I guess. I don't know. 20 Q And that street is a private drive, right? 21 A Yeah, the street is a drive -- is private. It's a 22 dead end. 23 Q Yep. And it's owned by East Winds? 24 A Yeah. 25 Q And does the city do, you know, the snow removal --</p>
<p style="text-align: right;">Page 47</p> <p>1 him. 2 Q I thought you said you saw him after the bites. 3 A Yeah, sometime later on I saw him. At one point I 4 saw him one time. I don't remember where or when, but I 5 remember I seen him once, but I don't remember the bites. 6 Q Sure. And on the next page, there's another picture 7 of the bite in the face. 8 A Okay. 9 Q Is that consistent with what you observed? 10 A I never seen the bites. I don't know. I guess they 11 are. 12 Q How about the next picture of the mouth? 13 A Yeah, I guess it's probably what happened. I never 14 saw them. 15 Q So if you go to the next picture, Ron -- 16 A Yeah. 17 Q -- at the top it says, digital photo -- 18 A Right. 19 Q -- photo DSCN6158. 20 A Uh-huh. 21 Q So the picture of what you called your truck is the 22 picture of that van, right? 23 A That's right, yep. 24 Q Okay. And the two little boys out there? 25 A Yeah, those are my grandkids.</p>	<p style="text-align: right;">Page 49</p> <p>1 A Yeah. 2 Q -- or does East Winds? 3 A Yeah, the city is responsible. It's a city street. 4 Q It's a city street you think? 5 A Yeah, it's a city street because I know because the 6 poles -- I guess it has to be a city street there. Nobody 7 owns the streets there. And the telephone poles are done by 8 the state too -- the town -- the town of Yankton has to come 9 down or somebody from the lighting company comes down and 10 says -- they told me I'm responsible for that. I said, no, 11 I'm not. I said, get your people down here today and replace 12 that bulb. I said, I don't want to hear it. So they're 13 responsible too for the bulb, the bulb on the pole, the city 14 of Yankton. They're responsible for the street, everything, 15 the snow -- who does the snow? I'm not sure if that's -- 16 Q Does Ron Galvan do the snow? 17 A I'm not sure. I don't know who the hell -- yeah, he 18 might do the snow himself. 19 Q He does the snow himself? 20 A Yeah, it's private, yeah. 21 Q Because it is a private road? 22 A Yeah. 23 Q And it's not in the city. It's in the county, 24 right? 25 A Right, in the county, yeah.</p>



<p style="text-align: right;">Page 50</p> <p>1 Q And when you look at that picture DSCN6158, you</p> <p>2 know, there are no steps leading up to that front door, are</p> <p>3 there?</p> <p>4 A At that moment there wasn't. I probably didn't have</p> <p>5 them at the time or something. He maybe might have meant the</p> <p>6 back steps over there. I don't know.</p> <p>7 Q Sure.</p> <p>8 A He could have meant those. I don't know.</p> <p>9 Q So the statement that states -- let's --</p> <p>10 A He might have been sitting on the top of the walk</p> <p>11 thing up there.</p> <p>12 Q If you go back to the second page of this exhibit --</p> <p>13 A Where, this page here?</p> <p>14 Q Yeah, the second page. Primary narrative it says at</p> <p>15 the top.</p> <p>16 A Yeah.</p> <p>17 Q It says, I spoke with Elijah Sorace and Joshua</p> <p>18 Eagleman, grandchildren of Pasman. Elijah stated that he was</p> <p>19 sitting on the front steps of the residence. There are no</p> <p>20 front steps of that residence?</p> <p>21 A Well, I don't know -- I don't know if there was or</p> <p>22 not.</p> <p>23 Q Well, if you look at the picture, which was taken</p> <p>24 that day, there's no steps there, is there?</p> <p>25 A I don't know what he meant by steps. He could have</p>	<p style="text-align: right;">Page 52</p> <p>1 Q Do you know what day of the week this was? Was it a</p> <p>2 Saturday?</p> <p>3 A I have no idea.</p> <p>4 Q Okay.</p> <p>5 A It might have been if it's daylight out like that.</p> <p>6 I don't know.</p> <p>7 Q And the picture taken that day only shows one</p> <p>8 vehicle in the driveway, right --</p> <p>9 A Yeah.</p> <p>10 Q -- not two?</p> <p>11 A Right.</p> <p>12 Q And Marco would have been chained to the hitch in</p> <p>13 front of your house?</p> <p>14 A Would have been, yeah.</p> <p>15 Q So where did Marco go to the bathroom at?</p> <p>16 A On the side. On the side of the house right there.</p> <p>17 Q Okay.</p> <p>18 A Yeah.</p> <p>19 Q And that's where the basketball hoop was located</p> <p>20 that day?</p> <p>21 A I guess, yeah. Possibly, yeah.</p> <p>22 Q Well, was that consistent with your memory?</p> <p>23 A I guess. I don't know. I didn't really remember.</p> <p>24 Probably. It looks like it would be there.</p> <p>25 Q But you're sure that you owned the basketballs that</p>
<p style="text-align: right;">Page 51</p> <p>1 meant sitting on the top of the thing there. He might have</p> <p>2 made -- you know, just talked -- being upset and everything</p> <p>3 about the bite.</p> <p>4 Q Or somebody got it wrong?</p> <p>5 A Well, either way, I don't see why that's such a bill</p> <p>6 deal. Okay. Anyhow.</p> <p>7 Q Okay. So --</p> <p>8 A What's the point of this thing?</p> <p>9 Q Well, I'm just trying to get the facts.</p> <p>10 A Yeah, I know. There's no steps.</p> <p>11 Q No steps --</p> <p>12 A Right.</p> <p>13 Q -- right?</p> <p>14 A At the moment, yeah.</p> <p>15 Q And this, at the bottom, is dated 9/3 of 2017 at</p> <p>16 11:19 in the morning.</p> <p>17 A Okay. Yeah, I don't know.</p> <p>18 Q Well, that's what it says, isn't it?</p> <p>19 A 9/3/2020. That's not the right date, was it? I</p> <p>20 guess it was -- 9/20 -- all right. Yeah, okay.</p> <p>21 Q 9/3/2017.</p> <p>22 A Oh, 2017. Okay. That's probably correct then.</p> <p>23 Q All right. And I think the time stamp is 11:19; is</p> <p>24 that right?</p> <p>25 A I don't know. I have no idea.</p>	<p style="text-align: right;">Page 53</p> <p>1 were being played with?</p> <p>2 A The what?</p> <p>3 Q Who owned the basketballs that were being played</p> <p>4 with?</p> <p>5 A My grandkids.</p> <p>6 Q So the next picture --</p> <p>7 A Yeah.</p> <p>8 Q -- is -- which is DSCN6159 --</p> <p>9 A Yeah.</p> <p>10 Q -- that shows a basketball hoop with --</p> <p>11 A Yeah.</p> <p>12 Q -- cinder blocks on it?</p> <p>13 A Yeah, all on the back of it, yeah.</p> <p>14 Q So do you know who put those cinder blocks there?</p> <p>15 A I don't know. It might have been me. I don't know.</p> <p>16 Q It might have been you?</p> <p>17 A Who knows? I don't know. I don't remember.</p> <p>18 Q And then if you look at the next page, Ron --</p> <p>19 A Yeah.</p> <p>20 Q -- DSCN --</p> <p>21 A I can see the chain here. That's right. The cop</p> <p>22 pulled the chain down. I remember that. He pulled the chain</p> <p>23 out all the way to show you how long the chain is. It's like</p> <p>24 ten feet long.</p> <p>25 Q And if you look under the door --</p>

<p style="text-align: right;">Page 54</p> <p>1 A Yeah.</p> <p>2 Q -- you can see --</p> <p>3 A Where there's a sign there and there's another sign</p> <p>4 on the other side.</p> <p>5 Q Yeah. And you had put those signs up?</p> <p>6 A Yep.</p> <p>7 Q When did you take those down?</p> <p>8 A Right after the dog was euthanized, probably the</p> <p>9 same day, the next day, somewhere around there.</p> <p>10 Q So if you look at the next picture.</p> <p>11 A Yeah.</p> <p>12 Q DSCN6161?</p> <p>13 A Yeah.</p> <p>14 Q Well, there, the chain looks much longer, true?</p> <p>15 A I don't know. I can't really tell.</p> <p>16 Q Okay. Well, you can see the chain go into the</p> <p>17 hitch?</p> <p>18 A Yeah, kind of.</p> <p>19 Q And you can see the second beware of dog sign,</p> <p>20 right?</p> <p>21 A Yeah.</p> <p>22 Q And then you can see it curled up?</p> <p>23 A Where?</p> <p>24 Q Right there.</p> <p>25 A Where? At that big --</p>	<p style="text-align: right;">Page 56</p> <p>1 A Yeah.</p> <p>2 Q If you turn to the next page, DSCN6162, another</p> <p>3 picture of the chain.</p> <p>4 A Right.</p> <p>5 Q Okay. The next page, DSCN6163.</p> <p>6 A Yeah, right, yep, hooks it to his collar.</p> <p>7 Q And how do you know that was tightened?</p> <p>8 A Because he was hooked onto the chain. He was hooked</p> <p>9 onto the collar. He's always chained. There's no other way</p> <p>10 to do it. Otherwise he'll get off. He will slip right out of</p> <p>11 that, on his collar. He would slip right out of his collar.</p> <p>12 That would never hold his collar.</p> <p>13 Q And the next three pictures, which is DSCN6164,</p> <p>14 6165 --</p> <p>15 A That's a crack in the cement.</p> <p>16 Q -- and 6166 --</p> <p>17 A Yeah.</p> <p>18 Q -- those all kind of show the blood from the attack?</p> <p>19 A Oh, I don't know. The truck -- all right. Yeah.</p> <p>20 Q And the same with DSCN6167?</p> <p>21 A Yeah.</p> <p>22 Q Blood on top of the van?</p> <p>23 A Yeah, I saw that, yeah. I don't know where the</p> <p>24 blood is, but anyhow.</p> <p>25 Q And the next picture, DSCN6168 --</p>
<p style="text-align: right;">Page 55</p> <p>1 Q Yeah.</p> <p>2 A That's weeds.</p> <p>3 Q Those are weeds?</p> <p>4 A Yes, that's grass growing through the cracks in the</p> <p>5 cement there.</p> <p>6 Q Okay.</p> <p>7 A That's not the chain. I think that's the chain</p> <p>8 right there, the little metal thing right there. It comes</p> <p>9 right down to there.</p> <p>10 Q Your testimony is that -- on DS --</p> <p>11 A That's a cement crack right there.</p> <p>12 Q And you're saying that large clump of material isn't</p> <p>13 in fact a chain --</p> <p>14 A No.</p> <p>15 Q -- but it's weeds?</p> <p>16 A Yeah, that's weeds. That looks like weeds.</p> <p>17 Q Okay.</p> <p>18 A That's not chain there. This here looks like where</p> <p>19 the chain is, that one dark spot right there. That's where it</p> <p>20 looks like the chain is.</p> <p>21 Q So who owned this camper?</p> <p>22 A The lady next door.</p> <p>23 Q Okay. What was her name?</p> <p>24 A I don't know. I never talked to her.</p> <p>25 Q Does she still live there?</p>	<p style="text-align: right;">Page 57</p> <p>1 A Yeah.</p> <p>2 Q -- which one of your grandsons is that?</p> <p>3 A That looks like the little one.</p> <p>4 Q Which one is the little one?</p> <p>5 A I think. Christ, I can't tell. Is that Elijah or</p> <p>6 Josh? It looks like the little guy. That looks like Josh,</p> <p>7 but then again, I don't know. It looks like the older one</p> <p>8 too. They both look alike a little bit.</p> <p>9 Q And that's the chain there laying on the cement?</p> <p>10 A Yeah, yeah. See, I mean, look how far away it is</p> <p>11 from the street there. He has no business walking onto my</p> <p>12 property trying to grab a basketball. I told him so many</p> <p>13 times stay away. I said, I don't want you on my property</p> <p>14 taking things that don't belong to you. He doesn't want to --</p> <p>15 he didn't listen.</p> <p>16 Q Well, you're not accusing him of being a thief?</p> <p>17 A It's got nothing to do with it.</p> <p>18 Q You're not accusing --</p> <p>19 A You let people on your property that don't belong?</p> <p>20 Q Excuse me. Excuse me, sir.</p> <p>21 A Do you let people on your property that don't</p> <p>22 belong?</p> <p>23 Q Sir?</p> <p>24 A Yeah.</p> <p>25 Q You're not accusing 12-year-old Kaleb of being a</p>

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1 thief?

2 A No, he's not being accused.

3 Q Honestly, you're not?

4 A Right.

5 Q And you are aware that he had been out there playing

6 basketball with your grandkids before on other occasions?

7 A Yeah, he's right. I told him he could play with

8 them, yeah. Why not?

9 Q So this was nothing new?

10 A Well, I don't know. I would say it is something new

11 because he got bit. What he did to that dog, I don't know,

12 but I was told he used to tease that dog by my grandkids. He

13 would walk by and tease that dog.

14 Q You know, they don't say that in the police report,

15 do they?

16 A Well, you have to ask my grandson and the cops

17 again. I don't know. Maybe they didn't put it in. They

18 could have forgotten. Who knows? I don't know.

19 Q Sure.

20 A Maybe it wasn't material, I don't know.

21 Q Sure.

22 A They do what they want here anyhow. What's the

23 difference?

24 Q So was Marco headstrong?

25 A Headstrong?

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1 Q Yeah.

2 A Yeah, he was a big dog.

3 Q Well, you had referred to him as very trainable, a

4 smart dog you had said.

5 A Oh, yeah, very smart. Probably one of the smartest

6 dogs I ever had --

7 Q So --

8 A -- I ever seen.

9 Q So if he's smart then he's likely not, you know,

10 this headstrong independent dog, right?

11 A I can't say. I can't speak for somebody else's

12 mind, especially a dog.

13 Q Well, I'm asking you your opinion.

14 A I can't give you an answer for that. I don't know.

15 Q Did you think Marco was headstrong?

16 A Yeah, he was a big dog. He's strong all the way

17 around.

18 Q So you said, yes, he is a headstrong dog?

19 A Yeah, of course, yeah, yeah, he was strong, whatever

20 that means. What's your definition of headstrong? I mean,

21 you're asking the question, you must know the answer to it,

22 what headstrong is.

23 Q Well, I'm asking you your opinion.

24 A I don't know what headstrong means.

25 Q Would you have ever described Marco as being

Page 60

1 headstrong?

2 A I don't know. You could put a yes or a no. It

3 depends what it means. I don't know what headstrong means.

4 Q Well, if you don't know what it means, would you --

5 would you have described him as being headstrong or not?

6 A I'm not comfortable putting that in because I don't

7 know what you want to call as the definition of headstrong.

8 Q All right.

9 A Put no for that then. That's all. That's a no

10 answer.

11 Q So Ron Galvan knew about the dog?

12 A Yeah.

13 Q Yes?

14 A Everybody knew about it, yeah.

15 Q And Ron Galvan knew you had the beware of dog signs

16 up?

17 A Yeah, everybody saw them.

18 Q And I think Ron said he stopped and talked to you

19 about the dog. Do you remember that at all?

20 A Not really. It must have been a long time ago.

21 Q Well, I'm looking at a statement of Ron Galvan.

22 A Yeah.

23 (Exhibit 5 was marked for identification.)

24 BY MR. KING:

25 Q And Ron Galvan says -- there's a question on his

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1 recorded statement and it says, now, um, were you aware that

2 the, um, tenant, I believe his name is Ron Pasman, were you

3 aware that he had a dog? Answer, that he had a dog?

4 A Who said -- wait, who asked who?

5 Q Collin Godfrey.

6 A Who is Godfrey?

7 Q He is the adjuster. The same adjuster that spoke to

8 you in March of '18.

9 A Adjuster for what?

10 Q Adjuster for United Fire Group.

11 A And who do they represent?

12 Q They represent -- they insure East Winds trailer.

13 A Oh, okay. The insurance company --

14 Q Yeah.

15 A -- for East Winds Court. And they asked Galvan that

16 question?

17 Q Yep.

18 A And what did they ask him again?

19 Q Were you aware that the tenant --

20 A Oh, okay. Yeah.

21 Q -- Ron Pasman, that he had a dog?

22 A Yeah, okay.

23 Q He answered, that he had a dog? Question, yeah.

24 Were you aware of him owning one prior to the incident?

25 Answer, oh, yeah. Ron had been in the court. Ron started his

Page 62

1 lease with us the first day of October, 2010. Question, okay.  
 2 And he's had the dog the whole time? Answer, no, I don't  
 3 know. Aw, man, I would guess he had the dog three or four  
 4 months.  
 5 But you had the dog three or four years -- pardon  
 6 me, four to five years?  
 7 A Oh, he probably meant when he first signed the  
 8 lease. I don't know -- I don't know -- I don't think I had  
 9 the dog -- no, I couldn't have had the dog -- it would have  
 10 been 12 years ago so I don't know. I don't know what that  
 11 means. I can't give you an answer for that.  
 12 Q Because you had had the dog the, well, four to five  
 13 years?  
 14 A The dog the whole duration, but when -- he asked on  
 15 the day of the incident -- he asked Galvan or whatever, a week  
 16 later or whatever. Who talked to Galvan, the insurance  
 17 company?  
 18 Q The insurance company, yep.  
 19 A Well, I don't know --  
 20 Q Can I have you move your keys?  
 21 A Well, I don't know what the point of this is.  
 22 Q Well, I'm just trying to --  
 23 A Yeah. I know. It doesn't make sense though.  
 24 Q Yeah, some of it doesn't make sense.  
 25 A Yeah.

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1 Q Aw, man, I would guess he had the dog three or four  
 2 months?  
 3 A Yeah, okay.  
 4 Q He said that he -- it came to him from a daughter or  
 5 a relative or something, and he took it temporarily and that's  
 6 all I know. That just came up in conversation. He doesn't  
 7 strike me as the type of guy to go out and buy a dog because  
 8 he lives by himself and he works. It's kind of hard to take  
 9 care of a pet.  
 10 A Yeah, right. Yeah, yeah.  
 11 Q Okay. And then it says, so he was watching the dog  
 12 for a family member.  
 13 A Uh-huh.  
 14 Q He was watching -- you know that's not true, and the  
 15 length of time isn't --  
 16 A Well, maybe it was --  
 17 MR. ARNDT: Counsel, I'm going to object to  
 18 the form at this point. You're asking the witness  
 19 about a statement that was taken between two parties  
 20 that he was not involved in. The statement can  
 21 speak for itself. If you want to ask the  
 22 question -- the witness questions about truth or  
 23 false of the statement, go ahead and do that, but  
 24 what's the point of having him repeat the statement  
 25 or you repeat the statement?

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1 MR. KING: Thank you.  
 2 BY MR. KING:  
 3 Q So I don't know. It came up in conversation. He  
 4 doesn't strike me as the type of guy to go out and buy a dog.  
 5 He lives by himself. Question, okay. So he was watching the  
 6 dog for a family member? And that's not true because she had  
 7 given you the dog.  
 8 A Well, in the beginning I don't know. I don't know.  
 9 That could be true or false. I don't know. It doesn't mean  
 10 anything anyhow. What's the difference? I don't see the  
 11 point of that either.  
 12 Q Well, no, it does make a difference.  
 13 A Well --  
 14 Q You weren't watching Marco for a family member?  
 15 A I don't know. I might have been at the beginning.  
 16 I don't know. I can't say that.  
 17 Q No --  
 18 A Well, I'm not going to have somebody put words in my  
 19 mouth that they don't know what the hell they're talking  
 20 about.  
 21 Q Right. This is untrue, correct?  
 22 A I don't know what that is. I mean, this is somebody  
 23 (sic) someone wrote. What do I care what they write? I don't  
 24 care what they write. They can write hosh kosh (phonetic).  
 25 Anything they want from another world. I couldn't care less.

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1 It doesn't mean nothing to me. The point is, I don't know.  
 2 Maybe it is true. It could have been in the beginning, maybe  
 3 just watching the dog.  
 4 Q Okay.  
 5 A I don't know what was the incident of why she called  
 6 me up for the dog anyhow, maybe to either give it to me or  
 7 watch it for me -- for her temporary. Maybe she had to do  
 8 something. I don't know.  
 9 Q Sure.  
 10 A I don't know so I'm not going to say that's true or  
 11 anything. What that really means to me -- it's just a  
 12 statement, big deal.  
 13 Q Okay.  
 14 A It doesn't mean anything to me. You can throw it in  
 15 the garbage. I don't care.  
 16 Q All right. No, I'm not finished. Because you just  
 17 got done telling me that you had had the dog for four or five  
 18 years.  
 19 A Yeah, in the end, sure.  
 20 Q So it was not a temporary dog on --  
 21 A That point that I just said, you're miss --  
 22 confusing yourself here. You're confusing yourself by  
 23 listening to what they're saying here. The point of this is  
 24 that I don't know what was said in the beginning of this  
 25 conversation when I first took the dog. That's what I don't

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1 know.  
 2 Q You don't know the conversation when you took the  
 3 dog?  
 4 A In the very beginning, I don't know what my  
 5 intentions were is what I'm trying to say.  
 6 Q Well, that's fine.  
 7 A Yeah. That's right.  
 8 Q That's fine.  
 9 A I'm not going to say somebody -- just because I had  
 10 the dog for four years doesn't mean I wanted the dog either in  
 11 four years that I wanted him.  
 12 Q Sure.  
 13 A I might have taken him out of respect for somebody  
 14 so that's another story too.  
 15 Q That's very important.  
 16 A That's right because I was working like Galvan said  
 17 so it would be hard for me to take care of a dog.  
 18 Q So you didn't even really want the damn dog?  
 19 A Well, in the beginning, I don't remember.  
 20 Q Because you had testified earlier that the dog was  
 21 given to you as a gift.  
 22 A I don't remember. I don't know.  
 23 Q Well, no --  
 24 A Maybe it was. Maybe it wasn't. I don't remember  
 25 that far back. I don't know. Maybe it was. Maybe it wasn't.

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1 I don't get the point. All right. So anyhow --  
 2 Q Do you want me to have her go back and read the  
 3 testimony?  
 4 A It doesn't matter to me. What's the difference? I  
 5 don't care.  
 6 Q I'm not worried if you think there's a difference.  
 7 A Well, I do think there's a difference. I'm going to  
 8 say what I want. I don't care who it is, whether it's you, to  
 9 a judge or anybody else. I'll tell it the way it is. If you  
 10 don't like it, that's just too bad.  
 11 Q Well, maybe we should take it to the judge.  
 12 A Well, then why don't we do that. How's that? You  
 13 go and get the judge and do it. Yeah, and I'll see you in  
 14 court --  
 15 Q You're going to refuse --  
 16 A -- about that, big guy.  
 17 Q You're going to refuse to answer, right?  
 18 A No, I'm not refusing to answer nothing. I'm just  
 19 saying I'm not going to listen to something that could be  
 20 true, could not be true, and I don't know if I would say what  
 21 is there is 100 percent accurate. So what's your point?  
 22 That's what I'm trying to say.  
 23 Q I have every right to question you about it.  
 24 A So do it. That's fine.  
 25 Q And I am doing it.

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1 A Then go ahead. So do it.  
 2 Q So then I expect a direct answer.  
 3 A So I'm getting a little annoyed. Tough shit.  
 4 MR. ARNDT: Counsel, why don't we take a  
 5 quick five-minute break and let everything cool  
 6 down.  
 7 THE WITNESS: Yeah, let's take a break.  
 8 MR. ARNDT: We've been at this for almost an  
 9 hour and a half.  
 10 THE WITNESS: Yeah, let's take a break.  
 11 MR. ARNDT: Let's take a five-minute break  
 12 and reconvene.  
 13 THE WITNESS: Yeah, I'll go over stuff here.  
 14 What's fair is fair.  
 15 (A recess was taken.)  
 16 THE WITNESS: Where's my papers that were  
 17 here that I had?  
 18 BY MR. KING:  
 19 Q These are right here. These are them. Exhibit 5  
 20 and --  
 21 A All right.  
 22 Q -- and I had asked you a pretty simple statement --  
 23 A Yeah.  
 24 Q -- that according to Ron Galvan, he thought you had  
 25 the dog for three to four months. You had actually had the

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1 dog four or five years, true?  
 2 A I don't know at the time. I have no idea. I don't  
 3 know what he said. I don't know if it's true. How can I give  
 4 you an answer for something that I don't know what he said?  
 5 Q Well, we do know because it's a transcript.  
 6 A Well, I don't know. I don't care what that says, it  
 7 doesn't mean nothing to me. What that says is nothing to do  
 8 with what is written.  
 9 Q All right. Ron, I'm going to tell you something. I  
 10 have you here under a subpoena.  
 11 A I don't care so --  
 12 Q You don't care about a subpoena?  
 13 A No, I don't give a shit, no.  
 14 Q And you don't give a shit that --  
 15 A No, because I'm not going to let you put words in my  
 16 mouth that I don't know what's been there.  
 17 Q Sir, I'm not asking to put words in your mouth. I'm  
 18 going to give you one more opportunity to answer the question.  
 19 A I don't care -- go ahead. I ain't going to play the  
 20 games. Let me tell you something, don't threaten me again  
 21 right now.  
 22 Q I'm not threatening you.  
 23 A I tell you right now, don't do it again. I'll make  
 24 it a problem for you.  
 25 Q And you, my friend, you better not threaten me. Do

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1 you understand me?  
 2 A No, I'm not going to understand nothing. I'm  
 3 telling you now, don't threaten me again with that. Don't  
 4 tell me I better.  
 5 Q Excuse me?  
 6 A I heard you. I just told you, don't tell me again.  
 7 Q You're here under a court order.  
 8 A I know that. So what's that got to do with  
 9 anything? Don't threaten me. Go ahead. Let's finish this.  
 10 Q So did you threaten the people at Raven Industries?  
 11 Is that what the whole protection order is?  
 12 A Don't put words into my mouth.  
 13 Q I'm not. I'm asking you a question.  
 14 A Just get back to this. Let's not get off the topic.  
 15 Q I'm going to ask you a common sense question.  
 16 A Yeah, go ahead.  
 17 Q Question, from the United Fire Group adjuster, on  
 18 March 9th of '18.  
 19 A Uh-huh.  
 20 Q Okay. And he had the dog the whole time?  
 21 A Uh-huh.  
 22 Q Answer, I don't know. Aw, man, I would guess he had  
 23 the dog three to four months.  
 24 A Okay.  
 25 Q You had previously testified you had had the dog for

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1 four to five years.  
 2 A Years so, right, okay. So what's the point? I  
 3 don't get it. So he says I had the dog. He doesn't know. He  
 4 says he doesn't know.  
 5 Q Well, he says three to four months.  
 6 A So what -- so what do you want me to say?  
 7 Q I want you to answer the question, which is -- nope,  
 8 I had the dog four to five years.  
 9 A I had the dog four to five years.  
 10 Q How hard is it to say that?  
 11 A I don't know. You're asking something that --  
 12 you're trying to make me say what he had the dog for.  
 13 Q No, I'm not.  
 14 A You're wanting me to say what he had written there.  
 15 Q I'm saying what he had said to the adjuster is not  
 16 accurate.  
 17 A I don't know.  
 18 Q Well, yes, we do.  
 19 A No, it's not -- I mean, it's not accurate, what he  
 20 said, that I had the dog for three to four --  
 21 Q There we go.  
 22 A Well, you should have said that. Anyhow, long story  
 23 short, let's go.  
 24 Q Yeah. And you did not keep the dog in the back  
 25 yard?

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1 A No.  
 2 Q Okay.  
 3 A Never.  
 4 Q So when he says Ron kept the dog in the back yard,  
 5 that's not accurate?  
 6 A I guess not.  
 7 Q Okay.  
 8 A He doesn't know. He doesn't even know how long I  
 9 had the dog. How's he going to know where I kept the dog?  
 10 Q How often did you see Ron Galvan out at the park?  
 11 A Quite a bit. He was always running through there.  
 12 Q I think you said he was out there every day.  
 13 A I don't know. I don't know.  
 14 Q You would refer to it as quite a bit. Let me ask  
 15 you a question. There's no way that Ron missed the fact that  
 16 you had two beware of dog signs posted on your property for  
 17 four to five years prior to this dog bite; is that accurate or  
 18 not?  
 19 MR. ARNDT: Object to the form, calls for  
 20 speculation.  
 21 BY MR. KING:  
 22 Q Go ahead and answer, sir.  
 23 A What was the question again? Say it again. What?  
 24 Q Sure. There's no way Ron missed the fact that you  
 25 had these beware of the dog signs up for four to five years?

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1 A I don't know. I don't know. It depends. I don't  
 2 know. I don't know how blind he is. Does he wear glasses?  
 3 Q Because he would have had to be blind to miss the  
 4 signs?  
 5 A Not really.  
 6 Q Why, were they too small? Did you put up too small  
 7 of signs?  
 8 A No, they weren't too small. You could see by the  
 9 picture they weren't small.  
 10 Q They were large signs?  
 11 A Yes, right, you could see that.  
 12 Q And anyone could see them from the road?  
 13 A Well, it depends if the truck was there or not,  
 14 blocking the sign at the time.  
 15 Q So your truck could have blocked --  
 16 A It could have.  
 17 Q -- both signs?  
 18 A Not the day he was there because if he walked up to  
 19 that store -- up to -- he could have saw the signs easily from  
 20 the street. If you start walking up to that house, you could  
 21 see the signs anywhere on that property. They're both right  
 22 there.  
 23 Q Anywhere on that property --  
 24 A That's right.  
 25 Q -- anyone could see them?

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1 A That's right. That's right. That's right. That's  
 2 right.  
 3 Q So you didn't intentionally park your car to block  
 4 those signs somehow?  
 5 A Hell, no. Hell, no.  
 6 Q In fact, you had them at both ends of the front  
 7 porch --  
 8 A That's right.  
 9 Q -- to give maximum notice to the public; is that  
 10 true?  
 11 A That's right. That's right. You could see them  
 12 signs. They were never blocked. That's right. You could  
 13 see --  
 14 Q So Ron Galvan would have had to have been blind to  
 15 have not see them?  
 16 A I guess. I don't know. It depends on his vision.  
 17 I can't answer that. I have no idea what his vision is, if he  
 18 wears glasses like I do or not. If he wears them for certain  
 19 things, he might have a problem seeing it. That's right. I  
 20 have the same problem. I have to wear different kinds of  
 21 glasses to see different lengths. So if he has that problem,  
 22 he's in trouble. But it doesn't matter if the signs were  
 23 visible or not, because I told that kid stay off the property.  
 24 For every time I saw that kid, I told him to stay away.  
 25 That's right. So he should have understood that. And I told

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1 of that kid. That's a fact. I would fight her in court for  
 2 the kid. That's the kind of guy I am. If she wants to fight  
 3 me in the courtroom, I'll go file for custody for the kid.  
 4 Q And the guy that you are is somebody that's never  
 5 committed a crime?  
 6 A It's none of anybody's business.  
 7 Q No, I asked you under oath if you committed a crime  
 8 and you said no.  
 9 A It's none of your business anyhow so I'm not going  
 10 to answer that. So you got your answer, and the answer is no.  
 11 Q Well, the answer is no?  
 12 A That's right.  
 13 Q So if I find something --  
 14 A You can find anything you want.  
 15 Q -- that's going to be false?  
 16 A I don't care. Go ahead and find something. Do what  
 17 you got to do.  
 18 (Exhibit 4 was marked for identification.)  
 19 BY MR. KING:  
 20 Q So in 8/17 of 2015, your dog had an ear infection,  
 21 Marco?  
 22 A Maybe. I don't know.  
 23 Q Well, this is -- I'm showing you what's been marked  
 24 as Exhibit 4.  
 25 A I don't know.

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1 his mother too, so remember that too. His mother didn't give  
 2 a damn. I'll tell that to anybody. And that's the facts.  
 3 His mother should have taken a little more consideration and  
 4 understood what I told her, this never would have happened  
 5 because she told me that's the reason why she let's him run  
 6 out in the street because she doesn't want to be bothered with  
 7 the ruckus in the house with the three of them -- with the two  
 8 other kids that have problems. That's why she let's him run  
 9 in the streets. She doesn't care. If she would have listened  
 10 to what I told her that day, before this incident occurred, he  
 11 never would have been bitten. She never -- and by law, social  
 12 services also -- she told me that also, don't tell this to  
 13 social services because I can get in trouble, she told me.  
 14 She says that kid is supposed to be under 24-hour supervision  
 15 because of his handicap. Well, then why did she let him run  
 16 in the streets? Why did she let him run the streets?  
 17 Q Is there anything else you would like to say, Ron?  
 18 A Yeah, it's her fault.  
 19 Q Go ahead.  
 20 A It's her fault. The mother's fault.  
 21 Q Okay. Ron, do you accept any responsibility for  
 22 what happened?  
 23 A No. I do not accept responsibility except I feel  
 24 sorry for the kid. If I had the money and I was a rich man,  
 25 that kid wouldn't be living with her. I'd be taking custody

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1 Q Which is the -- Marco --  
 2 A Okay.  
 3 Q -- is the patient.  
 4 A Okay.  
 5 Q Client is you.  
 6 A Okay.  
 7 Q And this is, you know, 2015.  
 8 A Okay. Five years ago.  
 9 Q And he had an ear infection, 6/12 of '15.  
 10 A Okay.  
 11 Q Yeah. The dog also had dermatitis on the skin.  
 12 A I don't know.  
 13 Q You don't remember that?  
 14 A No, I don't remember that. I don't think he did.  
 15 Q Sometimes dogs get too hot and get dermatitis on the  
 16 skin.  
 17 A Yeah, it's possible.  
 18 Q Dog is very headstrong.  
 19 A Yeah, okay. He is a pit bull, okay.  
 20 Q And that's what you meant, he's a pit bull, he's  
 21 headstrong?  
 22 A All dogs are headstrong.  
 23 Q All dogs are?  
 24 A If he's very -- If you're going to think like that,  
 25 yeah. That's why they twist their heads back and forth and

<p style="text-align: right;">Page 78</p> <p>1 they shake rags and they twist things and tear things up.</p> <p>2 They're all headstrong.</p> <p>3 Q And it says that the dog had allergies; is that</p> <p>4 right?</p> <p>5 A I don't know. I don't think so. If he did, it's</p> <p>6 nothing new to me.</p> <p>7 Q All right. And then a year later on 6/3 of '16, you</p> <p>8 brought the dog in again.</p> <p>9 A Yeah, I brought him in for checkups.</p> <p>10 Q Pardon me?</p> <p>11 A Once a year checkup it looks like, yeah.</p> <p>12 Q Okay. And you got -- you know, you got a rabies</p> <p>13 shot?</p> <p>14 A Yeah, he has to get his shot.</p> <p>15 Q You checked his eyes -- they checked his eyes --</p> <p>16 A Uh-huh.</p> <p>17 Q -- and gave him some eye drops because he had an eye</p> <p>18 infection.</p> <p>19 A I don't know.</p> <p>20 Q You don't remember that?</p> <p>21 A No, I don't.</p> <p>22 Q Sure. And in fact he had atrophy of his face, ears,</p> <p>23 eyes, ears and feet.</p> <p>24 A I don't know.</p> <p>25 Q You don't know that?</p>	<p style="text-align: right;">Page 80</p> <p>1 Q You don't know?</p> <p>2 A No. I never said I was accurate. Who's going to be</p> <p>3 accurate when it comes to a dog like that? I never heard --</p> <p>4 I'm not even going to -- I don't even go to doctors if I need</p> <p>5 a health checkup. I try to fight my infections by myself. I</p> <p>6 mean, let's get real. It's news to me. Christ.</p> <p>7 (Exhibit 6 was marked for identification.)</p> <p>8 BY MR. KING:</p> <p>9 Q This is a statement --</p> <p>10 A Where is the papers I had, my papers?</p> <p>11 Q I gave them to her.</p> <p>12 A Oh, okay.</p> <p>13 Q So this is a statement --</p> <p>14 A Okay.</p> <p>15 Q -- of Joshua Eagleman --</p> <p>16 A Okay.</p> <p>17 Q -- Elijah Sorace and Ron Pasman --</p> <p>18 A Okay.</p> <p>19 Q -- 6/5 of '18.</p> <p>20 A All right.</p> <p>21 Q And it's, again, by Collin Godfrey.</p> <p>22 A Yeah.</p> <p>23 Q Okay. Now, it starts out, this is Collin Godfrey on</p> <p>24 June 1st, 2018, at 11:14 in the morning interviewing Elijah</p> <p>25 blank and Joshua Eagleman with Ron Pasman present. Do you</p>
<p style="text-align: right;">Page 79</p> <p>1 A No.</p> <p>2 Q And then it says, many ear issues.</p> <p>3 A I don't know. I was -- I never heard of that. When</p> <p>4 was this written?</p> <p>5 Q On 6/3 of '16.</p> <p>6 A All right. Yeah, okay.</p> <p>7 Q You don't remember the dog having ear issues at all?</p> <p>8 A No, the dog looked good all the time I've had him.</p> <p>9 I never had to have none of that. I only brought him in for</p> <p>10 once a year checkup just out of respect for the dog, make sure</p> <p>11 he's healthy. If he had any issues, then I found out about</p> <p>12 it, but visibly, I never noticed anything. I never said I was</p> <p>13 a veterinarian.</p> <p>14 Q How come you didn't take the dog in in '17? You</p> <p>15 took the dog in in '15.</p> <p>16 A That's probably when I got rid of him.</p> <p>17 Q Well, you got rid of him on 9/8 of '17.</p> <p>18 A All right.</p> <p>19 Q But if you just follow this, June of '15, you bring</p> <p>20 the dog in.</p> <p>21 A I think so.</p> <p>22 Q In June of '16, a year later, you bring him in.</p> <p>23 A Yeah.</p> <p>24 Q But in June of '17, you skipped.</p> <p>25 A I don't know.</p>	<p style="text-align: right;">Page 81</p> <p>1 remember that?</p> <p>2 A No, I don't.</p> <p>3 Q Was that taken over the phone or was that at your</p> <p>4 house?</p> <p>5 A I have -- it must have been on the phone because I</p> <p>6 don't remember anybody coming to my house. If it is, then</p> <p>7 it's new to me. I don't remember.</p> <p>8 Q All right.</p> <p>9 A Maybe I wasn't there. I don't know.</p> <p>10 Q Okay.</p> <p>11 A Can't trust anybody these days. They're all slimy</p> <p>12 sneaks and liars.</p> <p>13 Q Joshua Eagleman, do you know how to spell your last</p> <p>14 name, Bud? Yeah. Date of birth, what year? Are you aware</p> <p>15 this is being recorded and Ron has given permission --</p> <p>16 A It was on the phone, okay.</p> <p>17 Q Yeah. And at the bottom of the first page of that</p> <p>18 statement, and this is from Joshua. Yeah, um, so, blank, dog</p> <p>19 in the back yard, um. But the dog was never kept in the back</p> <p>20 yard, so that's not accurate.</p> <p>21 A Yeah.</p> <p>22 Q Kaleb came up to the yard, blank, so there was a,</p> <p>23 blank, basketball hoop, blank, basketball hoop, and then there</p> <p>24 was another ball in the yard and the dog was outside and he</p> <p>25 wanted that ball that was close to the dog, and he went and</p>



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1 grabbed it and that's when the dog attacked him.  
 2 **A Okay.**  
 3 **Q Okay. I'm just jotting this down. So there's two**  
 4 **different balls in the yard? Yeah.**  
 5 **A Uh-huh.**  
 6 **Q And you guys used to have a basketball hoop? Yeah.**  
 7 **So there were two balls in the yard. He went for the ball**  
 8 **that was closest to Marco? Answer, yeah. And when he went up**  
 9 **to the ball is when he was attacked? Yeah. Question, was the**  
 10 **dog originally sleeping? Was there -- was he -- nope, he was**  
 11 **behind the truck. That's when he heard him grab the ball, and**  
 12 **that's when he ran after him.**  
 13 **You were present for this statement, right, Ron?**  
 14 **A I don't remember.**  
 15 **Q It does say --**  
 16 **A It doesn't matter what it says. I don't remember.**  
 17 **Q Okay.**  
 18 **A What it says, it doesn't matter. I don't care what**  
 19 **it says.**  
 20 **Q Sure.**  
 21 **A I don't remember this stuff. So what do you want me**  
 22 **to say?**  
 23 **Q And then it says, so was the dog startled at all?**  
 24 **Answer, no.**  
 25 **A Well, he doesn't know. He can't say if the dog ran**

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1 **behind the truck.**  
 2 **Q No, okay. And now, Josh, where were you during**  
 3 **this? He was standing by the truck too. Standing by the**  
 4 **truck? Right in the back yard.**  
 5 **Well, the truck isn't in the back yard. The truck**  
 6 **is in the front yard, right?**  
 7 **A Well, they're confused with the front and back, I**  
 8 **guess, I don't know.**  
 9 **Q Right. So he was nowhere near Kaleb during this?**  
 10 **Yeah, and then he, blank, too. Question, so they were playing**  
 11 **basketball? Yeah. Was the dog ever hit by the basketball?**  
 12 **No. So it's instead of him getting hit with a rebound or**  
 13 **something, Josh was playing with one ball and Kaleb went to**  
 14 **grab the other one, and at that time, blank, Marco? Answer,**  
 15 **yeah. Leading up to this you guys regularly hang out with**  
 16 **Kaleb? Nope, he always came in our yard.**  
 17 **MR. ARNDT: I'm going to object to the form**  
 18 **again. Counsel, are you testifying? Are you going**  
 19 **to ask him questions about the statement? What's**  
 20 **the point of this?**  
 21 **MR. KING: You made your record.**  
 22 **BY MR. KING:**  
 23 **Q Did you guys ever say anything to his mom? Answer,**  
 24 **no. That's not your testimony?**  
 25 **A Did who say anything to his mom? I don't get all**

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1 **this. I don't know what --**  
 2 **Q Have you guys ever spoken with him or your**  
 3 **grandfather about staying away?**  
 4 **A Well, they don't know. Maybe I confused myself.**  
 5 **Who knows? I don't know what the answers are. I can't**  
 6 **remember that many years ago. Who knows what the real truth**  
 7 **is now? It could be miscalculated, miswritten. It could be**  
 8 **anything, true, false. It's all hearsay at this point. Some**  
 9 **of it, I guess. I don't know. I mean, mish mish.**  
 10 **Q I'm on page 4 of that same statement. Question, do**  
 11 **you know how long the beware of dog signs were up? Answer,**  
 12 **um, they have been up actually. How long were they up? Days,**  
 13 **months or years? Um, actually months. So had you only had**  
 14 **the beware of dog signs --**  
 15 **A No, they were up there for years up there.**  
 16 **Q Years?**  
 17 **A Right. Yeah, that's right. Yep, I put them up**  
 18 **myself. That's how I know.**  
 19 **Q Why was the hoop taken down -- I'm on page 4 -- we**  
 20 **just, blank. Why was the hoop taken down?**  
 21 **A I don't know. Maybe they didn't want it.**  
 22 **Q Did you take it down?**  
 23 **A I don't know. I don't remember. What do you mean**  
 24 **take it down? It just rolls over there. There's nothing to**  
 25 **take down. It just rolls away. Maybe somebody took it. I**

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1 **don't know what happened to it. I have no idea where it is or**  
 2 **what happened to it. Probably the kids didn't want to play**  
 3 **basketball after seeing that no more.**  
 4 **Q So on page 5 they have the other child on the phone,**  
 5 **and the question on page 5 -- bless you -- hey, Josh --**  
 6 **A Yeah.**  
 7 **Q -- I wanted to talk to you about what happened. So**  
 8 **where were you at the time Kaleb was attacked? Um, in the**  
 9 **parking lot by the lines and the, blank. And you were where**  
 10 **the cars park? Answer, yes. And you were playing basketball?**  
 11 **Answer, yeah. Question, with Kaleb? Yeah. Is that something**  
 12 **that you guys did a lot? Answer, uh-huh. So your grandkids**  
 13 **did play basketball with Kaleb a lot?**  
 14 **A I don't know with Kaleb. I don't know about that.**  
 15 **I have no idea. I can't say yes or no. I didn't watch them.**  
 16 **So many jobs I work, I don't know if I was working days or**  
 17 **nights or when I was working. I don't remember either so it's**  
 18 **really hard to say. I don't know.**  
 19 **The date of court I'm going to bring witnesses with**  
 20 **me too. I'm going to let you know that right now. I'm going**  
 21 **to be bringing witnesses with me. Whoever I can get to bring**  
 22 **up there with me to the courtroom about that dog, or any**  
 23 **written documents, whatever I can get. I heard they don't**  
 24 **work in courtrooms anyhow, court documents. They're not**  
 25 **admissible. They don't mean a damn thing to the judge because**

<p style="text-align: right;">Page 86</p> <p>1 the person is not there in court to testify, they don't want  2 to hear it. I don't know if that's true or not. We'll find  3 out that day in court.  4 Q Have you ever talked with John Blackburn about this?  5 A Yeah, I think so.  6 Q When did you talk with John?  7 A It was the day after this happened or the same day.  8 I don't remember.  9 Q What did --  10 A It was around the same day or somewhere within that  11 week or so.  12 Q What did John Blackburn say to you?  13 A He said, get rid of the dog. I said, all right.  14 I'm getting rid of him. That's what the police told me to do.  15 That's what I talked to Blackburn. He said, get rid of the  16 dog. I says, all right, and that's what I did.  17 Q Did you talk --  18 A The police told me it's the law, you've got to get  19 rid of the dog once he bites somebody. I said, all right.  20 That's what the police told me. I don't know if they were  21 bullshitting me or not, lying. I don't know what they were  22 doing. Maybe it is the truth. I have no idea, but they told  23 me I had to get rid of him, put him to sleep.  24 Q So --  25 A And then people told me I didn't have to do it. I</p>	<p style="text-align: right;">Page 88</p> <p>1 garbage going on. People getting murdered and everything. I  2 live by myself. I don't want nobody breaking into my house  3 trying to kill me. If they want to come to me, they're going  4 to have to come through the dog first.  5 Q So as we've talked today, have you remembered where  6 you were working in 2017?  7 A Let me see. If I have to guess, probably Walmart, I  8 guess. I don't know. I don't know where I was. I don't know  9 if it was Walmart or not. Time goes by so fast. I don't  10 remember.  11 Q Was Walmart full-time employment?  12 A Yeah, but it was night shift. I don't remember. I  13 worked the graveyard shift.  14 Q So why were your grandkids there?  15 A Because I -- they were giving their grandmother too  16 much of a trouble. There were too many kids at the house.  17 Everybody wanted this, everybody wanted that, so I took two of  18 them out of there.  19 Q So you --  20 A I took the boys.  21 Q How long had they been there?  22 A Probably about four or five years. Since they  23 started school, which was -- I don't know -- probably three  24 years at least, I think.  25 Q Did they attend school in Yankton?</p>
<p style="text-align: right;">Page 87</p> <p>1 don't know what the truth is.  2 Q Did you talk with Ron Galvan after this?  3 A Just one time, I think, maybe. That's about it.  4 Q What was said?  5 A Well, at the time he -- I called him up and told him  6 the dog bit somebody. That was it. He said, get rid of the  7 dog and don't get another one, another pit bull. I said, no,  8 I won't get another dog like that. That was it.  9 Q Was Marco territorial?  10 A What do you mean? I don't know what you mean.  11 Q Do you know what territorial means?  12 A Not in the way it's said, no. What do you mean  13 territorial? What does that mean?  14 Q You know most dog owners would say that dogs have a  15 territorial instinct.  16 A Oh, yeah, yeah. Well, I really -- he knows where he  17 lives. I mean, I guess that's about all I could say. I don't  18 know. I can't read the dog's mind.  19 Q I understand.  20 A Territorial? Yeah, I would think he is if he bit  21 the kid, yeah. He knew the kid shouldn't have been on the  22 property, yeah.  23 Q And part of the reason that you got Marco was for  24 protection, as you've testified to earlier?  25 A Yeah, that's right, yeah, because I heard a lot of</p>	<p style="text-align: right;">Page 89</p> <p>1 A Uh-huh, yeah.  2 Q At that time they went to Yankton school --  3 A Yeah.  4 Q -- not Rosebud?  5 A From the day they lived with me, they went to school  6 with me.  7 Q Pardon me?  8 A They went to school here in Yankton from the time  9 they moved here, yeah.  10 MR. KING: Okay. I don't think I have any  11 other questions at this time.  12 EXAMINATION  13 BY MR. ARNDT:  14 Q Okay. Ron?  15 A Yeah.  16 Q My name is Mark Arndt. I represent East Winds  17 trailer court in this lawsuit.  18 A Yeah, okay.  19 Q I've got just a couple of follow-up questions for  20 you.  21 A Yeah.  22 Q Prior to the date that Marco bit Kaleb, September  23 3rd, 2017, are you aware of any incident in which Marco had  24 bit another person?  25 A No, he never did, no. The dog never bit a soul.</p>

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1 Q You didn't believe Marco was a problem to the  
2 trailer court?

3 A Never, huh-uh. Never appeared to ever have any  
4 incidents of interrogating anybody or anything like that.

5 Q And because you weren't aware of any prior incidents  
6 with Marco, the East Winds trailer court wouldn't have had any  
7 reason --

8 A No.

9 Q -- to be concerned about Marco, correct?

10 A Correct.

11 MR. KING: Objection, calls for speculation.

12 BY MR. ARNDT:

13 Q Well, you had never reported and you weren't aware  
14 of anybody else in the trailer court reporting a problem with  
15 Marco --

16 A No.

17 Q -- to East Winds trailer court?

18 A Never.

19 Q How long do you think the chain was -- well, was the  
20 chain that Marco was kept on, on the day of the incident,  
21 short enough that it kept Marco on your lot?

22 A Oh, yeah, we never had any problems at all. He  
23 couldn't even get off the lot by a foot even. He was like at  
24 least 10, 15 feet away from the street.

25 Q I want to clarify --

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1 A Like 15 feet away from the street, at least.

2 Q I want to clarify, I think one of your earlier  
3 answers today towards the beginning of Mr. King's questions.  
4 Did I hear you say that other people came onto your property  
5 and petted or played with Marco?

6 A Yeah. Mailman.

7 Q And one of those was the postman?

8 A Yeah, I couldn't believe it either. He was an old  
9 guy like me, and I couldn't believe it.

10 MR. ARNDT: Okay. I think that's all the  
11 questions I have for you, Ron. Thank you.

12 MR. KING: I don't have any questions.

13 MR. ARNDT: Okay. Ron, you are not my  
14 client, but I'm going to give you some instructions  
15 here at the end of the deposition as we're  
16 concluded. You would have a right to review your  
17 deposition transcript --

18 THE WITNESS: Oh, yeah. Where is that paper  
19 I had that was here? My -- oh, you have it. Okay.

20 THE COURT REPORTER: It will be attached.

21 THE WITNESS: Yeah, thank you

22 MR. ARNDT: You would have a right to review  
23 your deposition transcript --

24 THE WITNESS: Review it.

25 MR. ARNDT: -- for any errors before it would

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1 become certified. It's just basically making sure  
2 that Stacy took down your testimony accurately. I'm  
3 going to recommend that you waive your right to  
4 review that, but if you want to review it before it  
5 becomes certified, she would send you a paper and  
6 you would have 30 days to review it before it would  
7 become official.

8 THE WITNESS: You mean from today -- you mean  
9 from this court, from in here rather?

10 MR. ARNDT: Yeah, actually 30 days from when  
11 she would provide a copy of the transcript to you.  
12 I usually advise my witnesses to waive the right to  
13 do that because I think the court reporters take  
14 down the testimony accurately, but it's up to you.  
15 Do you want to waive that right? She'll send you --  
16 someone can still send you a copy of transcript.

17 THE WITNESS: Yeah, I would rather read it.  
18 I would rather read it to make sure.

19 MR. ARNDT: You want to review it to make  
20 sure?

21 THE WITNESS: Yeah, I'll not take a chance.  
22 You never know. One little slip of a word can make  
23 a whole sentence wrong, you know.

24 MR. ARNDT: I understand.

25 THE WITNESS: This world is crazy.

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1 (4:01 p.m.)

2 C E R T I F I C A T E

3 STATE OF SOUTH DAKOTA )

4 :SS

5 COUNTY OF MINNEHAHA )

6 I, STACY L. WIEBESIEK, RPR, CSR, Notary Public  
7 in and for the State of South Dakota, do hereby certify that  
8 the deposition of RONALD PASMAN was by me reduced to machine  
9 shorthand in the presence of the witness, afterwards  
10 transcribed by me by means of computer, and that to the best  
11 of my ability the foregoing is a true and correct transcript  
12 of the deposition so given by the witness as aforesaid.

13 I further certify that this deposition was taken  
14 at the time and place specified in the foregoing caption.

15 I further certify that I am not a relative,  
16 counsel or attorney for any party, or otherwise interested in  
17 the outcome of this action.

18 IN WITNESS WHEREOF, I have hereunto set my hand  
19 at Sioux Falls, South Dakota, on the 7th day of June, 2020.

20

21

22

23

24

25

STACY L. WIEBESIEK, RPR, CSR  
NOTARY PUBLIC

My Commission expires December 21, 2019.

DEPOSITION OF: RONALD PASMAN  
DATE: JUNE 2, 2020

PAGE	LINE	CHANGE
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**SIGN & DATE**

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PRAIRIE REPORTING  
P.O. BOX 2008  
SIOUX FALLS, SD 57101

June 7, 2020

Dear Mr. Pashman,

At the time your deposition was taken it was indicated that you would like to exercise your right to read and sign the deposition transcript. Please do so at this time and make any changes or clarifications you deem appropriate. However, do NOT write on the transcript from which you are reading. Simply write the page and line number on the enclosed Errata sheet along with any corrections.

Upon completion, sign the Errata sheet and return it to me in the enclosed envelope. It is important that you take care of this matter at your earliest convenience.

If you have any questions, call me at the number indicated below. Thank you for following these instructions.

Sincerely,

Stacy L. Wiebesiek, RPR  
Court Reporter

Exhibits	2	5	
<b>Exhibit 1</b> 20:3 24:14	<b>2</b> 2:9 32:8,11 35:24	<b>5</b> 20:16 60:23 68:19 85:4,5	<b>accidents</b> 31:5
<b>Exhibit 2</b> 32:8,11	<b>20</b> 2:8 26:13	<b>5,000</b> 8:5	<b>accurate</b> 67:21 71:16,19 72:5,17 80:2,3 81:20
<b>Exhibit 3</b> 35:16,20	<b>2000</b> 19:20	<b>50</b> 14:8	<b>accused</b> 58:2
<b>Exhibit 4</b> 76:18,24	<b>2007</b> 20:22,23 21:1 22:3		<b>accusing</b> 57:16,18,25
<b>Exhibit 5</b> 60:23 68:19	<b>2010</b> 7:9 13:12 17:18 19:21,23 20:18 21:2,4 22:6 32:25 62:1	<b>6</b>	<b>acknowledge</b> 13:22
<b>Exhibit 6</b> 80:7	<b>2012</b> 18:1	<b>6</b> 2:11 80:7	<b>address</b> 5:25 7:10 33:18
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1 STATE OF SOUTH DAKOTA ) IN CIRCUIT COURT  
2 COUNTY OF YANKTON ) :SS  
3 FIRST JUDICIAL CIRCUIT

4 TERESA BURGI, INDIVIDUALLY, AND  
5 TERESA BURGI, AS GUARDIAN AD LITEM FOR  
6 KALEB RAYMOND BURGI

6 Plaintiffs

7 -vs-

8 EAST WINDS COURT, INC.

9 Defendant and Third-Party Plaintiff

10 -vs-

11 RONALD PASMAN

12 Third-Party Defendant

13 \* \* \* \* \*

14 ZOOM DEPOSITION OF

15 RONALD VICTOR GALVIN, SR.

16 APRIL 23, 2020

17 \* \* \* \* \*

18 APPEARANCES:

19 KING LAW FIRM

20 Sioux Falls, South Dakota

21 BY: KIRK D. RALLIS, ESQ. (by Zoom)

22 Counsel on behalf of the Plaintiffs

23 EVANS, HAIGH & HINTON

24 Sioux Falls, South Dakota

25 BY: MARK J. ARNDT, ESQ.

Counsel on behalf of the Defendant and  
Third-Party Plaintiff

ALSO PRESENT: John Blackburn

<p>1 INDEX</p> <p>2 WITNESS EXAMINATION BY PAGE</p> <p>3 Mr. Galvin Mr. Rallis 3</p> <p>4 Mr. Arndt 25</p> <p>5 Mr. Rallis 26</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 NUMBER DESCRIPTION PAGE</p> <p>9 1 Medical Records 3</p> <p>10 2 Medical Bills 3</p> <p>11 3 Photographs 3</p> <p>12 4 Reports 3</p> <p>13 5 Affidavit 3</p> <p>14</p> <p>15 *****</p> <p>16 The Zoom deposition of RONALD VICTOR GALVIN, SR. was</p> <p>17 taken on the 23th day of April, 2020, commencing at 8:47 a.m.;</p> <p>18 said deposition taken before Stacy L. Wiebesiek, RPR, CSR, a</p> <p>19 Notary Public with and for the State of South Dakota.</p> <p>20</p> <p>21 RONALD VICTOR GALVIN, SR.</p> <p>22 called as a witness, being first duly sworn, deposed and</p> <p>23 said as follows:</p> <p>24</p> <p>25</p>	<p>Page 4</p> <p>1 answers that you give, you know, obviously, be clear, and that</p> <p>2 way this will go a lot faster. What is your current -- what</p> <p>3 is your name, full name?</p> <p>4 A Ronald Victor Galvin, Sr.</p> <p>5 Q And what is your current address?</p> <p>6 A 300 Pearl Street in Yankton, South Dakota.</p> <p>7 Q And how long have you lived there?</p> <p>8 A 22 years, I believe.</p> <p>9 Q Are you married?</p> <p>10 A Yes, sir.</p> <p>11 Q Do you have any kids?</p> <p>12 A Eight.</p> <p>13 Q Eight kids?</p> <p>14 A Yes, sir.</p> <p>15 Q God bless you. Where do you work?</p> <p>16 A I work for John Blackburn Housing.</p> <p>17 Q And where is that located?</p> <p>18 A In Yankton, South Dakota.</p> <p>19 Q And how long have you worked for East Winds?</p> <p>20 A Since we purchased it.</p> <p>21 Q When did you purchase East Winds?</p> <p>22 A About 15 years ago I think.</p> <p>23 Q Are you a part owner in East Winds?</p> <p>24 A No, sir.</p> <p>25 Q Who owns East Winds?</p>
<p>Page 3</p> <p>1 (Exhibits 1-5 were marked for identification.)</p> <p>2 MR. ARNDT: While we have a minute before we</p> <p>3 get started, can we agree to the standard</p> <p>4 stipulation for the deposition this morning,</p> <p>5 including that we're preserving objections except to</p> <p>6 the form of question until the time of trial?</p> <p>7 MR. RALLIS: That's fine. You know, they</p> <p>8 have -- that's fine -- because I had sent over</p> <p>9 Exhibit 1, which was the medical records. Exhibit 2</p> <p>10 is the medical bills. Exhibit 3 is the photographs.</p> <p>11 Exhibit 4 is the reports, and Exhibit 5 is the one I</p> <p>12 just sent you, which was the affidavit I sent over</p> <p>13 to you yesterday. That's fine. We'll stipulate to</p> <p>14 that.</p> <p>15 EXAMINATION</p> <p>16 BY MR. RALLIS:</p> <p>17 Q Good morning, Mr. Galvin. My name is Kirk Rallis</p> <p>18 with King Law Firm. How are you today?</p> <p>19 A I'm fine.</p> <p>20 Q Just a couple of things I wanted to go through with</p> <p>21 you. Obviously, with the technology and the things that we</p> <p>22 are trying to do now, if you don't understand a question that</p> <p>23 I have asked or if you don't know, just say you don't know.</p> <p>24 If you need me to repeat something, that's -- I would be happy</p> <p>25 to repeat it. And I would just ask that, you know, any</p>	<p>Page 5</p> <p>1 A The corporation, John Blackburn, I believe.</p> <p>2 Q And what do you do for Mr. Blackburn?</p> <p>3 A I'm semi-retired. I do whatever is necessary. I</p> <p>4 check the properties. Whatever needs to be done, I take care</p> <p>5 of it and any requests that are made of me.</p> <p>6 Q Have you ever been deposed before?</p> <p>7 A I missed that.</p> <p>8 Q Have you ever had your deposition taken before?</p> <p>9 A No, sir.</p> <p>10 Q Have you ever testified in court before?</p> <p>11 A Have I ever done what in court before?</p> <p>12 Q Testified in court before?</p> <p>13 A Yes, sir.</p> <p>14 Q Okay. Was that -- what was that related to?</p> <p>15 A When I was a police officer in Yankton.</p> <p>16 Q What years were you a police officer in Yankton?</p> <p>17 A I started in '79, and I was on the police department</p> <p>18 for about a year and a half and then I took over the jail, and</p> <p>19 I was there about three years.</p> <p>20 Q And I'm sorry. When did you begin working for</p> <p>21 Mr. Blackburn?</p> <p>22 A May 19th it'll be 23 years.</p> <p>23 Q What did you do to prepare for your deposition</p> <p>24 today? Did you review any documents?</p> <p>25 A I just -- asked me, you know, on the phone what I --</p>

<p style="text-align: right;">Page 6</p> <p>1 some questions. I answered them and that was pretty much it.</p> <p>2 MR. BLACKBURN: You had that instructions to</p> <p>3 witnesses sheet.</p> <p>4 THE WITNESS: Yes. Oh, and I did get a sheet</p> <p>5 on something for witnesses before you testify, you</p> <p>6 know.</p> <p>7 BY MR. RALLIS:</p> <p>8 Q Okay. Did you ever meet with Mr. Arndt prior to</p> <p>9 this deposition?</p> <p>10 A Did I ever what?</p> <p>11 Q Meet with Mr. --</p> <p>12 MR. ARNDT: Sir --</p> <p>13 THE WITNESS: Can I interrupt you for a</p> <p>14 second. If you turn away while you're talking, I</p> <p>15 lose part of it.</p> <p>16 BY MR. RALLIS:</p> <p>17 Q Okay. I'm sorry.</p> <p>18 A That's okay.</p> <p>19 Q Did you ever meet with Mr. Arndt prior to this</p> <p>20 deposition?</p> <p>21 A No, sir, I don't believe so.</p> <p>22 MR. ARNDT: Counsel, I want to interject just</p> <p>23 quickly if I may to make sure the record is clear.</p> <p>24 Although I didn't personally meet with Mr. Galvin, I</p> <p>25 did spend some time on a conference call with Mr.</p>	<p style="text-align: right;">Page 8</p> <p>1 Q When was that?</p> <p>2 A I can't give you exact names right this minute but</p> <p>3 I -- I haven't been the manager for almost two years now, over</p> <p>4 two years. Yeah, I went semi-retired in -- it will be two</p> <p>5 years in September.</p> <p>6 Q But you were the manager of East Winds Court on</p> <p>7 September 3rd, 2017?</p> <p>8 A Yes, absolutely.</p> <p>9 Q Okay. Have you ever -- have you ever evicted a</p> <p>10 tenant at any property as a result of a dog bite?</p> <p>11 A No, sir. No, sir.</p> <p>12 Q Have you ever evicted a tenant for having a pet at</p> <p>13 East Winds?</p> <p>14 A We had one tenant that was -- their animals were</p> <p>15 problematic off of the court, and they were asked to leave.</p> <p>16 Q And do you know approximately when that was?</p> <p>17 A And I was what?</p> <p>18 Q Do you know when that was? When that was?</p> <p>19 A It -- at least three and a half years ago now.</p> <p>20 Q How often, prior to September 3rd of 2017, would you</p> <p>21 visit East Winds Court?</p> <p>22 A When I was the manager, I visited the court nearly</p> <p>23 almost every day, drove through.</p> <p>24 Q How were the rents paid at East Winds Court by the</p> <p>25 tenants?</p>
<p style="text-align: right;">Page 7</p> <p>1 Galvin preparing for his deposition today.</p> <p>2 MR. RALLIS: Very good.</p> <p>3 BY MR. RALLIS:</p> <p>4 Q Have you -- have you read any witness statements</p> <p>5 prior to your deposition today?</p> <p>6 A No, sir.</p> <p>7 Q Have you seen any photographs prior to your</p> <p>8 deposition today?</p> <p>9 A Just of the house of the trailer of Mr. Pasman's</p> <p>10 home.</p> <p>11 Q Have you discussed this lawsuit with anyone else</p> <p>12 besides Mr. Blackburn and Mr. Arndt?</p> <p>13 A No.</p> <p>14 Q Have you posted any information about this lawsuit</p> <p>15 online to anybody?</p> <p>16 A No, no.</p> <p>17 Q So you have no possessory interest in the property</p> <p>18 of East Winds Court?</p> <p>19 A I missed what you said.</p> <p>20 Q You have no -- you have no ownership interest in the</p> <p>21 East Winds Court?</p> <p>22 A Oh, no, absolutely not.</p> <p>23 Q Okay. Have you ever had to evict a tenant in East</p> <p>24 Winds before?</p> <p>25 A Yes, sir.</p>	<p style="text-align: right;">Page 9</p> <p>1 A How were the what, sir?</p> <p>2 Q The rents paid by the tenants at East Winds Court.</p> <p>3 How were the rents paid?</p> <p>4 A I have a drop box or I had a drop box in the pump</p> <p>5 house. They would leave their envelopes there. I would pick</p> <p>6 them up and do the deposits and whatever else entailed.</p> <p>7 Q How did Teresa Burgi pay for her rent?</p> <p>8 A Teresa Burgi, I get a check from her sister every</p> <p>9 month.</p> <p>10 Q How did Ron Pasman pay his rent?</p> <p>11 A Ron Pasman, for the last few years, pays his rent</p> <p>12 once a year. He pays the full amount.</p> <p>13 Q Are any of the tenants at East Winds Section 8</p> <p>14 tenants?</p> <p>15 A What?</p> <p>16 Q Are any of the tenants Section 8 tenants?</p> <p>17 A I don't believe so.</p> <p>18 Q So Teresa Burgi is not a Section 8 tenant that you</p> <p>19 know of?</p> <p>20 A I don't believe so.</p> <p>21 Q When you would visit East Winds, as you stated on a</p> <p>22 regular or daily basis, what did you do when you would go</p> <p>23 there on a daily basis?</p> <p>24 A What did I do when I went on there?</p> <p>25 Q Correct.</p>

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1 A I would drive up and down the courts, make sure the  
2 lots were clean, cars weren't parked on the street during the  
3 winter so I could do the snow removal. Anything that was a  
4 violation of the rules or maybe I saw as a coming problem, I  
5 would check it out.

6 Q Are you aware of the contents of the leases that  
7 East Winds has with its tenants?

8 A Yes, sir.

9 Q And some of those leases have a no pets policy. Are  
10 you aware of that?

11 A I don't think any of them -- no, number 13 talks  
12 about pets, and it was only some footnotes, and others put in  
13 there -- in three different breeds of dogs that we do not  
14 allow in the court at all anymore.

15 Q Okay. But prior to September 3rd, 2017 the leases  
16 included a no pets policy. Are you aware of that?

17 A No, I'm not. We had a pet policy, just that they  
18 not have -- non-vicious and it couldn't be -- disturb the  
19 neighbors and stuff like that. It was never you can't have  
20 pets.

21 Q Okay. Are you aware that some -- the leases  
22 included a no vicious animal policy?

23 A I know -- yes, it's a no vicious animal policy.

24 Q So you're aware that many of the tenants or some of  
25 the tenants at East Winds did have dogs; is that correct?

Page 11

1 A Oh, absolutely.

2 Q And do you recall the name of some of those tenants  
3 that had dogs?

4 A You would have to repeat that one.

5 Q Do you know the name of the tenants that had dogs at  
6 East Winds?

7 A No, sir, they weren't required to notify us -- well,  
8 they owned their own homes.

9 Q In your statement to United Fire, you stated that  
10 you were aware that Ron Pasman had a pit bull at his property  
11 in the months prior to September 3rd; is that correct?

12 A No, sir, I knew he had a dog.

13 Q Okay. You knew he had a dog prior to this September  
14 3rd; is that correct?

15 A Yes, sir.

16 Q Okay. But you didn't -- but you do not recall  
17 whether or not the leases included a no pets policy; is that  
18 correct?

19 A I still don't know that it has a no pet policy.

20 Q Have you ever received any complaints by any tenants  
21 as it relates to dogs on the property?

22 A Have I ever had what -- a tenant do what?

23 Q Have you ever had tenants complain about dogs on the  
24 property?

25 A Yes, sir, I have.

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1 Q And what would you do to rectify that?

2 A As soon as they got ahold of me or I was aware of  
3 the situation, I would stop, talk to the tenant, whether it  
4 was barking, whether it was not contained in their yard,  
5 whether it was running loose, that type of thing, and that's  
6 how it was handled. I handled it as soon as I got ahold of  
7 any information.

8 Q Okay. And you're aware as manager that there are  
9 children living at East Winds Court; is that correct?

10 A Am I aware of what?

11 Q That children resided at East Winds Court.

12 A I'm still not getting it after the children.

13 Q You're aware that children lived at East Winds  
14 Court?

15 A Oh, absolutely.

16 Q How many children would you say lived in East Winds  
17 Court on -- as of September 3rd, 2018? How many children  
18 resided there? Do you know approximately?

19 A Approximately how many animals we have on the court?

20 Q No. How many children resided in East Winds Court  
21 as of September 3rd, 2017?

22 A I don't have an accurate account of that.

23 Q Would you say more than ten children lived there?

24 A We probably averaged two children per unit. Some  
25 don't have any, some have more.

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1 Q And you're aware -- and these children would play at  
2 each other's houses at East Winds Court; is that correct?

3 A I would have to assume they might, yeah, but I don't  
4 know that for a fact.

5 Q Would you ever see children playing together at East  
6 Winds Court?

7 A Some families, yes.

8 Q What is the pump house and where is it located?

9 A The pump house is on Belair. It's 1102 Belair.  
10 It's where we get the water from B-Y Water, and then we pump  
11 it to the different units. It's at the end of Belair and  
12 Highway 50.

13 Q In Jennifer Pinkelman's lease in 1999 there is a  
14 clause in there that says no pets are allowed to be kept by  
15 the tenant upon the leased premises. Are you aware of that  
16 clause?

17 A No, I'm not.

18 Q In the photograph that you saw regarding  
19 Mr. Pasman's property, there's a van in the driveway. Do you  
20 know whose van that is?

21 A I would assume it's Ron's.

22 Q And in that picture there are two beware of dog  
23 signs posted on his trailer. Have you seen those?

24 A I don't remember seeing them but I can't say for  
25 sure.

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1 Q But you would drive by his -- his trailer every day,  
2 as you said, and you never noticed the beware of dog signs  
3 when you would drive by his property?

4 A This is over two years ago. I was just ending my  
5 management time, and I don't recall seeing beware of dog  
6 signs.

7 Q Do you know -- do you know if Ron Pasman has had his  
8 statement taken by anybody as it relates to this matter?

9 A No, I have no knowledge of that.

10 Q Do you know if Mr. Pasman had a doghouse on his  
11 property?

12 A I don't remember a doghouse. He was staked out way  
13 in the back the last time I saw it. And there may have been a  
14 kennel, but there was a shed there so I don't know if that's  
15 what he used as a kennel or a doghouse.

16 Q So Mr. Pasman did have a kennel in the back?

17 A No, I said I don't remember if he has a kennel for  
18 sure, but there is a shed back there.

19 Q Did Mr. Pasman ever tell you that the dog was  
20 dangerous?

21 A No, sir. If he would have, I would have told him  
22 that he needs to remove him from the court.

23 Q Did you know that Mr. Pasman told other tenants that  
24 the dog was dangerous?

25 A One more time?

Page 15

1 Q Do you know if Mr. Pasman -- do you know that  
2 Mr. Pasman told other tenants that the dog was dangerous?

3 A I don't have any knowledge of that.

4 Q So you do not know how long the beware of dog signs  
5 were on the trailer; is that correct?

6 A No. Like I said, I haven't seen them or I don't --  
7 I'm not aware of them.

8 Q Mr. Pasman moved there in 2010; is that correct?

9 A I believe that's it.

10 Q How many times since 2010 approximately have you  
11 ever talked with Mr. Pasman?

12 A When he first moved in quite a bit because he was  
13 doing construction under his -- on his trailer and he needed  
14 information, and I stopped to talk to all the tenants.

15 Q Have you ever met Teresa Burgi?

16 A I beg your pardon?

17 Q Have you ever met Teresa Burgi?

18 A Oh, of course.

19 Q Okay. How many times have you ever talked with  
20 Teresa Burgi approximately?

21 A Probably a couple dozen times over the years.

22 Q Do you know what kind of lease arrangement that she  
23 has with East Winds?

24 A What was that?

25 Q Do you know what kind of lease arrangements that she

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1 has with East Winds?

2 A Just the lease that's on file, whatever that is.

3 She used to live on Belair.

4 Q Why did she move from Belair to her current address?

5 A Did you ask me when?

6 Q No. Why did she move from Belair to her current  
7 address?

8 A We had a tenant that was causing some grief, her  
9 ex-mother-in-law, and we talked about it and I had an opening  
10 on Meadow View and she decided to move. We talked to her mom  
11 and dad and her sister and -- and the decision was made for  
12 her to move and she did.

13 Q Okay. Mr. Blackburn was aware of this arrangement?

14 A I don't know if he was or not. I know -- he was --  
15 yeah, he would have known that she moved afterward but not  
16 during the negotiations and stuff. I handled all of that.  
17 That was my part.

18 Q On September 21st of 2017, you sent out an open  
19 letter to all the tenants. Do you recall that letter -- open  
20 letter to all the tenants regarding animals?

21 A Yes, I do.

22 Q Did you draft that letter?

23 A Yes, I did.

24 Q Did Mr. Blackburn help you draft this letter?

25 A I know he told me what he wanted in it. I'm not

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1 sure if anything in there verbatim came from him. It was  
2 mostly me. That was my area.

3 Q In this --

4 MR. ARNDT: Counsel, I'm sorry. I would like  
5 to interject an objection at this point to the form  
6 of the question and just make sure I -- if I could  
7 have a standing objection including subsequent  
8 remedial measures to any letter drafted that was  
9 after the date of the subject incident.

10 MR. RALLIS: Okay.

11 BY MR. RALLIS:

12 Q In this open letter that was provided to us by  
13 defense counsel, it states in there that, quote, in the last  
14 couple of months, we have had some serious problems with dogs  
15 in the court. Do you recall that statement?

16 A Yes.

17 Q It further says, so for now, no pit bulls,  
18 rottweilers or Dobermans will be allowed on the court. Do you  
19 recall that?

20 A Yes, sir.

21 Q Do you know Kaleb Burgi?

22 A Yes, I do.

23 Q Have you ever talked to Kaleb?

24 A Oh, yes.

25 Q Are you aware that Kaleb has special needs?

<p style="text-align: right;">Page 18</p> <p>1 A Yes.</p> <p>2 Q When did you first hear about Kaleb being attacked</p> <p>3 by a dog?</p> <p>4 A As memory serves me, it was either late that night</p> <p>5 or the next day. Nobody called me immediately and said this</p> <p>6 happened, you need to come out. Nothing like that.</p> <p>7 Q In your experience as an officer, have you ever</p> <p>8 dealt with pit bulls before?</p> <p>9 A Not as an officer, no, sir.</p> <p>10 Q Have you, at any time in your life, ever had any</p> <p>11 experience with pit bulls before?</p> <p>12 A Yes, sir.</p> <p>13 Q In what capacity was that?</p> <p>14 A My grown son and his wife had a pit bull. They were</p> <p>15 living in an apartment so I kept the pit bull and -- until we</p> <p>16 could find a home for it.</p> <p>17 Q When you were an officer, you never had any dealings</p> <p>18 with people with dogs that would bite?</p> <p>19 A No, not really. We had an animal control officer</p> <p>20 that would usually handle that.</p> <p>21 Q So you never had to write a report as a police</p> <p>22 officer relating to dog bites?</p> <p>23 A Not that I recall.</p> <p>24 Q Have you ever, as a manager of the property, dealt</p> <p>25 with a dog bite incident?</p>	<p style="text-align: right;">Page 20</p> <p>1 A I can't see which way the basket is facing, but</p> <p>2 evidently they might have, yeah.</p> <p>3 Q If you look closer at the picture, you'll see a</p> <p>4 basketball in the background. Do you see the basketball?</p> <p>5 A Not in the picture I'm looking at. Hold on, sir. I</p> <p>6 have about a half a dozen. The only one that shows the</p> <p>7 basketball -- the back of it standing with bricks on it to</p> <p>8 weight it and a young man. There is no basketball. I don't</p> <p>9 see any basketball.</p> <p>10 Q When did you -- how soon after did you talk to</p> <p>11 Mr. Pasman after the dog bite incident?</p> <p>12 A I have never talked to Ron Pasman since the dog</p> <p>13 bite. I didn't realize how -- what -- what had happened, and</p> <p>14 I didn't go to see him. And Mr. Blackburn told me he had</p> <p>15 already talked to Ron and the dog was being removed from the</p> <p>16 court. There wasn't much more to say.</p> <p>17 Q I'm sorry. What did you say the pump house was used</p> <p>18 for?</p> <p>19 A The pump house is where B-Y Water pumps the water</p> <p>20 that they supply the court with. We go to circulating pumps</p> <p>21 and storage tanks and pump it to the station to the people.</p> <p>22 We have a backup water system.</p> <p>23 Q So you are aware -- you were aware prior to</p> <p>24 September 3rd of 2017 that tenants had dogs on their</p> <p>25 properties; is that correct?</p>
<p style="text-align: right;">Page 19</p> <p>1 A No, sir.</p> <p>2 Q Is this the only property that you managed?</p> <p>3 A The court you mean?</p> <p>4 Q Yes.</p> <p>5 A No, I used to manage other property.</p> <p>6 Q And in your experience as a property manager of any</p> <p>7 of those other properties, you never had to deal with a dog</p> <p>8 bite incident?</p> <p>9 A Not a dog bite, no. Dog complaints, yes.</p> <p>10 Q In the photograph of Mr. Pasman's trailer, you see</p> <p>11 the basketball court -- the basketball net there?</p> <p>12 A Just a second. I don't -- I'm looking at the</p> <p>13 pictures, and the pictures that were taken by the county</p> <p>14 sheriff do not show -- oh, yes, I do. Yes, I do. The one</p> <p>15 picture showed there is a basketball hoop there, and that was</p> <p>16 put in later on when Ron's grandkids were staying for part of</p> <p>17 the summer.</p> <p>18 Q Okay. But that picture was taken on the day of the</p> <p>19 dog bite.</p> <p>20 A I didn't know that, but if you say so.</p> <p>21 Q Well, it was taken by the sheriff's office on the</p> <p>22 day of the dog bite so --</p> <p>23 A Okay.</p> <p>24 Q And so you're aware that children would play</p> <p>25 basketball there in the street at all?</p>	<p style="text-align: right;">Page 21</p> <p>1 A Yes, sir.</p> <p>2 Q And prior to September 3rd of 2017 none of those</p> <p>3 tenants ever had their dogs removed by East Winds Court?</p> <p>4 A I'm not sure before or after. We had a tenant at</p> <p>5 the end of Meadow View. Their dogs had caused some damage</p> <p>6 outside of the court, and we made them get rid of the animals</p> <p>7 and move.</p> <p>8 Q Was it your duty to sign up new tenants to East</p> <p>9 Winds Court?</p> <p>10 A It was my responsibility to what?</p> <p>11 Q To sign up new tenants to East Winds Court.</p> <p>12 A I wrote all the leases, yes, sir.</p> <p>13 Q Why didn't you write up a lease for Teresa Burgi?</p> <p>14 A Which lease are you talking, the first one?</p> <p>15 Q No, as it pertains to Teresa Burgi.</p> <p>16 A Yes.</p> <p>17 Q You never had her sign a lease; is that correct?</p> <p>18 A Yes, sir.</p> <p>19 Q And why is that?</p> <p>20 A Because her sister owns the trailer. Jennifer</p> <p>21 signed the lease, I believe.</p> <p>22 Q But Teresa would pay the rent, do you know?</p> <p>23 A No, Jennifer pays the rent, Teresa puts it in the</p> <p>24 box.</p> <p>25 Q Do you know -- are you familiar with landlord-tenant</p>

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1 law at all as far as it pertains to leases?

2 A I'm -- I don't believe so.

3 Q Do you know what kind of leases need to be in  
4 writing in South Dakota?

5 A What kind of leases?

6 Q Yeah. What kind of leases need to be in writing  
7 when it comes to rental property, do you know?

8 MR. ARNDT: I'll object to the form to the  
9 extent that it calls for a legal conclusion. Ron,  
10 you can answer the question if you understand it.

11 THE WITNESS: I assume the kind of lease that  
12 we're using.

13 BY MR. RALLIS:

14 Q Do you know whether or not any of the tenants have  
15 leases that are -- that go for longer than a year?

16 A Oh, absolutely. All the leases are written, and  
17 they just keep the same lease until they move out. I've  
18 had -- some tenants have been there 19 years.

19 Q Are you aware that the leases are month-to-month  
20 leases?

21 A Yes.

22 Q Do you know that that in South Dakota month-to-month  
23 leases do not need to be in writing? Did you know that?

24 A My understanding was in South Dakota a  
25 month-to-month lease, at the end of the lease, it just

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1 continues on. Unless you make changes to it, it's the same  
2 thing whether they're one year or ten years.

3 Q When was the first time that you saw Mr. Pasman's  
4 dog?

5 A I would say at least a couple months before the  
6 incident, at least, if not a little bit longer. I went -- I  
7 was driving by, I saw the dog. He didn't have a dog so I  
8 stopped to ask him and talk to him about it, and he told me  
9 that the dog was temporary. And I think he said it was  
10 actually his daughter's dog, but she couldn't keep it where  
11 she was so -- he said I guess I got a dog for a little while.  
12 I think that was the whole conversation. And I saw the dog,  
13 you know, so I moved on.

14 Q You never saw the beware of dog signs up until that  
15 time?

16 A I told you I didn't see the beware of dog signs at  
17 that time.

18 Q Have you met Mr. Pasman's grandchildren?

19 A No. I saw them in the yard but I was never  
20 introduced to them and I didn't meet them, no.

21 Q In the picture that has the basketball net, there's  
22 like a vacant lot there. Is that part of Mr. Pasman's  
23 property or is that common area?

24 A That is Mr. Pasman's property. The trailers are set  
25 up -- the front of his trailer faces the street. The side of

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1 his trailer faces the north, and that's where that lawn is.

2 There really isn't a lot of backyard. It's mostly side yard.

3 Q So what is the common area of East Winds property?  
4 Is it just the street?

5 A It's from the street to the back of the -- there's a  
6 fence way in the back, a farmer's fence, and then he has to  
7 the south of the trailer to the north of him and he has just  
8 to the -- four foot on the south side of his home. That's all  
9 his property.

10 Q Did you talk with any of the other tenants after the  
11 dog bite incident about the dog bite incident?

12 A Somebody -- a couple of them had mentioned it, asked  
13 me what I knew, and I told them basically I didn't know  
14 anything, hadn't heard anything new. Didn't know how Kaleb  
15 was, didn't know how bad Kaleb was, anything. So rather than  
16 say anything negative or bad, I just told them I didn't know  
17 anything, which I didn't.

18 Q Did they share with you any information that they  
19 had about the incident?

20 A I think maybe they may have mentioned saying  
21 something -- we heard one of the kids got bit by a dog. Other  
22 than that, there was no real conversation about it.

23 Q Prior to September 3rd of 2017, would dogs sometimes  
24 wander around East Winds Court?

25 A Yes, sir.

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1 MR. RALLIS: That's all I have for right now.

2 Thank you.

3 THE WITNESS: Thank you, sir.

4 EXAMINATION

5 BY MR. ARNDT:

6 Q Ron, this is Mark. Can you hear me okay?

7 A You're not quite as clear as he is, but you're doing  
8 fine, Mark.

9 Q Okay. Well, just let me know if for some reason you  
10 can't hear me. I have just a few follow-up questions for you.  
11 First of all, prior to the incident that is the subject of  
12 this lawsuit, in which Kaleb Burgi was bitten by Mr. Pasman's  
13 dog, had anyone ever made you aware of any problems with  
14 Mr. Pasman's dog?

15 A No.

16 Q No one had reported any prior dog bite incidents?

17 A No dog bite incident, no barking, nothing.

18 Q And that would include no one had complained that  
19 the dog was running around loose in the neighborhood?

20 A No, not -- nothing like that.

21 Q Okay. I realize that you weren't necessarily an  
22 eyewitness to the incident, but based upon your knowledge of  
23 the incident and perhaps even a review of the sheriff's  
24 report, are you aware of where the incident took place?

25 A If the pictures indicate where the chain was, then,

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1 yes, it would have been towards the front part of Mr. Pasman's  
2 lot.

3 Q And that would have been on the private property, so  
4 to speak, of the property that Mr. Pasman was leasing?

5 A Yeah, it would have been -- yes, that's his  
6 property.

7 Q That dog chain did not extend as far as the common  
8 area or anything like that?

9 A It didn't appear to at all.

10 MR. ARNDT: Okay. I think that's all the  
11 questions I had for you, Ron.

12 MR. RALLIS: I just have one follow-up.

13 EXAMINATION

14 BY MR. RALLIS:

15 Q Mr. Pasman doesn't own that land; is that correct?

16 A He rents the land.

17 Q He rents the land?

18 A Yeah.

19 Q But East Winds Court, Inc. is owner of the land?

20 A Yes.

21 MR. RALLIS: Okay. That's all.

22 MR. ARNDT: Ron, before we conclude with you,

23 I think as we had discussed during our conference  
24 call earlier this week that you have a right to  
25 review your deposition transcript for any errors

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## C E R T I F I C A T E

1 STATE OF SOUTH DAKOTA }

2 :SS

3 COUNTY OF MINNEHAHA }

4  
5  
6 I, STACY L. WIEBESIEK, RPR, CSR, Notary Public in and  
7 for the State of South Dakota, do hereby certify that the  
8 deposition of RONALD GALVIN was by me reduced to machine  
9 shorthand in the presence of the witness, afterwards  
10 transcribed by me by means of computer, and that to the best  
11 of my ability the foregoing is a true and correct transcript  
12 of the deposition by the witness as aforesaid.

13 I further certify that this deposition was taken at  
14 the time and place specified in the foregoing caption.

15 I further certify that I am not a relative, counsel or  
16 attorney for any party, or otherwise interested in the outcome  
17 of this action.

18 IN WITNESS WHEREOF, I have hereunto set my hand at  
19 Sioux Falls, South Dakota, on the 29th day of April, 2020.

20  
21 

22 STACY L. WIEBESIEK, RPR, CSR  
23 NOTARY PUBLIC

24 My Commission expires December 21, 2025.  
25

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1 before it would become certified. I'm going to  
2 recommend that you waive your right to do that. Is  
3 that okay with you?

4 THE WITNESS: It's fine with me if it's okay  
5 with you guys.

6 MR. ARNDT: Okay. Thanks, Ron.

7 MR. RALLIS: That's fine.

8 (10:35 a.m.)



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**Z**

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Zoom 2:15



- A. Okay. \_\_\_\_\_ start the recording, that's fine.
- Q. Alright.
- A. They don't type as fast as you talk.
- Q. I will try and slow it down a little bit then. Alright. This is Collin Godfrey at 14:10 on March 9<sup>th</sup>, 2018 interviewing Ron Galvan. Ron, could you please state your name and spell your last out for me?
- A. Uh-my name is Ron Galvan G-A-L-V-A-N. And it's just Ronald Victor Galvan is \_\_\_\_\_.
- Q. Alright. And what is a good mailing address for you?
- A. My mailing address and the home office for East Winds is 300 Pearl P-E-A-R-L Street in Yankton, South Dakota 57078.
- Q. Alright. And what is a good contact phone number for you?
- A. Uh-the one you just called on is my home office and that's 605-665-4561, and I also have a cell phone and that is 605-661-4366.
- Q. Alright. And in your own words, can you tell me what happened back on, let's see September 3<sup>rd</sup>, 2017?
- A. Well, I know nothing. Everything I got is second and third hand. I was not in the court at the time. I was not-I never saw the child. Um-by the time I heard about it and got out to the court, uh-he had already had the dog put down, and I never did see, I have did go to Teresa's house. Um-Teresa and I have history. She-she is not a bad lady. Let me explain that. She has had some hard luck and she gets kind of bitter and uh-that's why I didn't go, but there was nothing I could add, there was nothing, it wasn't my \_\_\_\_\_ I didn't see it, so I didn't do anything.
- Q. Okay. And just so we have the just of it. I believe her son's name is Kaleb?
- A. Uh-I can't \_\_\_\_\_ tell you. He is a very nice young man. I know that he's is a special ed child. Um-and he-I see him around the corner a lot of-he is on the go all the time, but he is not a mischievous child or anything like that as far as I could tell, you know, I don't know, but he does go on other's people property at times and \_\_\_\_\_ shooed him home.
- Q. Okay. I am writing this down here, so bear with me.
- A. That's fine.
- Q. Okay. Now um-were you aware that uh-the tenant, I believe his name is Ron Passman. Were you aware that he had a dog?
- A. That he had a dog?

- Q. Yeah. Were you aware of him owning one prior to this incident?
- A. Oh, yeah. Ron has been in the court; Ron started his lease with us the first day of October 2010. They are both long time tenants.
- Q. Okay. And he's had the dog the whole time?
- A. No. I don't know. Awe, man. I would guess he had the dog three or four months and what he had said to me is it was a daughter a relative or something and he took it temporarily and that's all I know, uh-and that was-that just came up in conversation. He didn't strike me as the type of guy to go out and buy a dog because he lives by himself and he works, it's kind of hard to take care of a pet.
- Q. Okay. So he was watching the dog for a family member?
- A. What was that?
- Q. He was watching the dog for a family member? At least that's what he stated to you?
- A. I don't know if he was watching it or he took it because they couldn't take care of it. It was-it was just kind of a grey area. He just said it was so-and-so's dog. And I like I say my hearing is bad. He said it was so-and-so's dog and I just got it and so that was \_\_\_\_\_.
- Q. Okay. Do you guys charge additional for people to have pets?
- A. Okay. Hold on a sec. Do we charge for additional people to have pets? No, we don't.
- Q. Okay. And um-let's see, you said he started leasing there October 2010.
- A. Yes, sir.
- Q. And uh-up until this point, had you known anything like for that dog to have vicious tendencies?
- A. No. Uh-we have, hold on a minute. We have had uh-no trouble-hold on a minute. Um-okay. Let me see what you said? No, with-with this dog, I didn't even know. It just seemed like a dog and it was always way back at the end of his lot, so I really never got to know the dog. He didn't even bark when I came up to the house, so I really \_\_\_\_\_ they don't have to-they are not required to tell me they have a pet unless it's on our property, and then um-you know, one of our homes, and then I just explain to them the rules and everybody knows you can't let your dog run loose and outside of your yard. Uh-just like you are not supposed to let your kids run loose. Well, you know, that's kind of a joke. \_\_\_\_\_ property to property and you know, like I said Theresa has a-she is good \_\_\_\_\_ kids and every one of them are special needs and um-the young man that does go out, he has pretty much got the run of the court and uh-I don't know how do you stop that you know, I just-but he never caused any grief as far as I know other than being.



- Q. Okay. Do you know about how old he is?
- A. If I was to guess, eight or nine, somewhere in that neighborhood. Maybe a little younger. You know, I have got tons of grand kids, but they all look the same to me. They do. I mean I have got 24 grand kids and five great grand kids and after a while I go to \_\_\_\_\_ every one of them looks the same.
- Q. Alright. Let's see. Now did Mr. Passman have insurance at all or do you know of that?
- A. Mr. who?
- Q. Passman, the owner of the dog?
- A. I have no idea. I don't know. He uh-I don't know if he has insurance or not. I really don't. Um-it's not a requirement. The ones in the court, we always suggest um-rental insurance, but um-on our houses we pay, you know, we have \_\_\_\_\_ or anything like that, and the people that have their own, they have to you know, decide how much they want or if they want, and I wouldn't have any way of knowing who has and doesn't have insurance.
- Q. Okay. Okay. And uh-about how far away does Theresa live from Ron?
- A. Hold up. Let me pull, I am going to pull up a map and I can tell you exactly \_\_\_\_\_ of the um-the court and I can tell you exactly how many mobile homes she lives away, okay?
- Q. Okay.
- A. I would say it's at least three or four. That's a guess. I know they are on the same side of the street. Okay. East Winds. Um-\_\_\_\_\_ numbers. Okay. Passman lives at 1204 and then there is \_\_\_\_\_ she is the third home down, she lives at 1300 Meadow View. Ron lives at 1204 Meadow View. So there is two mobile homes in between them.
- Q. Okay. And Ron, you said, kept his dog in the backyard?
- A. Well, okay. In the mobile home court. Um-the \_\_\_\_\_ rectangle. It's about 150 feet deep and it's \_\_\_\_\_ 7 5 or eighty feet wide. The-the mobile home itself runs down running the length of it, and then the rest of it is your yard, and he had a shed and there is a tree back there I think, and he kept the dog at the far end of the home and the property. Into the deep end of it, not close to the street, but I guess that's how you would say it.
- Q. And uh-I guess we would know nothing about training, weight, anything, any specifics about the dog?
- A. Yeah, I don't know that it was anything you know, it was just a pet. I don't know that there was any training. Like I said, at first I didn't even know he had one, like I said the

dog didn't bark when you come up to the house and um-and I never saw him walking the dog or anything and I ain't ever seen any of the tenants walk their dogs, you know, it's just. They were just there.

Q. Okay. Did you know anything about the breed of the dog prior to this?

A. No, I knew it was-it was a fairly good sized dog, but it wasn't huge, I am-I don't think it's as big as my lab, but I don't know. Somewhere in-like I said, it wasn't close enough to really know, I don't remember because like I said, it was in the back and I never went back to introduce myself to the dog. You know how that goes.

Q. Okay. Now, would you able to get me a copy of the lease agreement?

A. Absolutely-um-and John says he has your fax number. I can fax that to you and uh-I will do that, and I don't know if I will be in the main office today, but I will need to get that-I will get that to John. I don't know if he is working tomorrow or not, um-but I am off for the weekend, but at the latest I will get it to you Monday morning.

Q. Okay. That's fine. There is no-no rush on it.

A. Okay.

Q. After this uh-happened, did you see Kaleb? Did you see anything as far as his injuries? Were there any photos taken?

A. You know, no. It was the funniest thing, if-if somebody hadn't told me it happened, I wouldn't have known anything about it. Nothing. Nobody called me at home. Um-nobody left a message on my phone. Theresa never called me and left a message. I was surprised that she didn't. She is very excitable. Like I say, she-she has got a lot on her plate.

Q. Mm-hm.

A. And um-in fact, she lived on the other street and then moved to this side uh-and so like I said, she just \_\_\_\_\_ just um-like I was really surprised she didn't call me or she-her mom and dad used to live at the end of the street, and nobody called me. Nobody from the family. One of the neighbors said, well did you hear what happened? I go no, what happened? And then they told me and I said okay-and-and like I said, I think it was the next day or so, it was very short after that Ron had put the dog down. So I never even saw the dog again. Never saw it, never saw any evidence. Of course \_\_\_\_\_ if you didn't see the boy and you didn't see the dog, there is nothing to look at you know.

Q. Have you \_\_\_\_\_...

A. I can't even tell you for sure it happened. I believe it did and everybody and you're calling me about it, so it must have happened. I just never saw anything about it and nobody ever contacted me. To date nobody has except for you and then John \_\_\_\_\_ what have you heard, I told him and that was about it. I haven't even talked to Ron about the incident. Yesterday was the first day, the day before yesterday was the first day I

saw him when I was out moving snow so, and we didn't talk about it because you know, that wasn't what we were doing, we were moving snow and trying to help all the neighbors get cleared out a little bit, but like I said he has never mentioned it and I never asked.

Q. Okay. Do you have his contact information?

A. For Ron?

Q. Mm-hm.

A. Well, I have got his address, hold on, I may have his phone number. Um-let's see Ron-the number I have is 605-655-4002.

Q. 4002. Okay. And his mailing address is the 1204...

A. Meadow View Road. M-E-A-D-O-W-V-I-E-W, one word, and then Road, and that's in Yankton, South Dakota.

Q. Okay. I got that here, and then I will get the Lease Agreement here from you.

A. Yup.

Q. I will ask when I reach back out to the attorney for the Burgi's, I believe, um-I will see if they have any photos of Kaleb Burgi's injuries. Um-have you seen Kaleb since?

A. No. I haven't seen Theresa or the kids out, and the weather has been so nasty and I \_\_\_\_\_ and I don't live in the court.

Q. Okay.

A. So I wouldn't have seen them. I don't see 90 percent of the tenants.

Q. Okay. Well, I believe at this time, that's everything I have for you. Is there anything else that you would like to add to this statement?

A. Um-well, like I said, if I would have seen the dog, anybody was aggressive and stuff like that or a barker, and we have moved people because of their dogs barking because people aren't going to choose a pet over family, you know, you don't, you know how they are, some of them believe they are part of the family, and I have told people, you have either got to keep the dog quiet or you have got to move, so anyway that's what's going on there. Okay. Hold on one second. I will be right with you. I am on the other line. Hold on. Um-so that's all I have for you. If there's anything else you need feel free to call me.

Q. Okay. Let me just do the closing remarks here and I will let you take that call.

A. Okay.

Q. Um-everything that you have told me is true and to the best of your knowledge?

A. Yes, sir.

Q. And you understand that this was recorded?

A. Yes \_\_\_\_\_.

Q. And it was done so \_\_\_\_\_?

A. \_\_\_\_\_ and \_\_\_\_\_ that's as far as it went, is that it?

Q. That was the question.

A. Yes, sir. You told me about it. I was aware of it.

Q. Alright. Well, thank you so much for your time here today. I hope you have a great day and a great rest of your weekend.

A. You too. Thank you, sir.

Q. Bye.

A. And this is Collin Godfrey now concluding this interview.

END OF CONVERSATION.

Transcribed by Casi Heeren on 3/12/18.



Claim No. 06014088

RECORDED STATEMENT RESUME

Interviewer: Colin Carberry

Recorded Direct on 02/12/06

Recorded Statement of Chamini 02/12/06

Name: <u>Ron P. Williams</u>	Address: <u>1201 N. 1st St. near</u> <u>West 1st St.</u>	Phone No. <u>605-661-9916</u>
DOB: <u>10/18/56</u>	SSN: <u>                    </u>	Citizen: <u>                    </u>
Medicare: <u>                    </u>	HICN No.: <u>                    </u>	
SSDI: <u>                    </u>	End Stage Ren: <u>                    </u>	ALS: <u>                    </u>
Injured: <u>N/A</u>	If yes, explain: <u>                    </u>	

Subject Data & Comments:

- 2010
  - 2013
  - Close to Syria
  - pitbull 88lbs 2ft tall
  - daughter bought him yard
  - Curran's shots
  - turned by owner/turned to back to back
  - kept in back yard
  - bulls - were ripped
  - 2 boxes of dog signs, had signs @ 4y
  - no fence - dog was chained with 2 heavy chains
- RESUME - didn't tell us he had dog
- Syo - told him to stay out of yard.
- cure for bull
- near Spott with mom
- saw Ruler go into neighbor's yard
- slowly
- stone was at the time
- SD - Gail Ad
- dog put down
- on the 8th

- ☐ Do Not Transcribe
- ☒ Transcribe with copies to

Colin Carberry

Revised/Recorded Statement Resume (01/2011)

4/5/2006 V

- walking

- Grieve



STATE OF SOUTH DAKOTA )  
 : SS  
COUNTY OF YANKTON )

IN CIRCUIT COURT  
FIRST JUDICIAL CIRCUIT

TERESA BURGI, INDIVIDUALLY, AND TERESA BURGI, AS GUARDIAN AD LITEM FOR KALEB RAYMOND BURGI,  Plaintiffs,  vs.  EAST WINDS COURT, INC.,  Defendant & Third-Party Plaintiff,  vs.  RONALD PASMAN,  Third-Party Defendant.	CIV. 19-000261   <b>AFFIDAVIT OF JANICE ANDERSON</b>
---	---

I, Janice Anderson, after first being first duly sworn and under oath, depose and state as follows:

1. My name is Janice Anderson. I currently reside at 1202 Meadow View Rd, Yankton, SD 57078, in the *East Winds Court, Inc.* trailer park.
2. I live right next door to Ronald Pasman.
3. I have personal knowledge of Ronald Pasman's former dog "Marco".
4. I was afraid of Marco.
5. I knew that Marco was aggressive.
6. If you got near him, Marco was aggressive.
7. His chain went right up to our property line.
8. When I mowed my lawn Marco would come out to the end of his chain which went right up to the property line to try to attack the mower.
9. You shouldn't walk up to this dog.



10. The "Beware of Dog" signs had been posted for a long time. Mr. Pasman put them up after he got the dog.
11. The neighborhood kids routinely played out in the street by the basketball hoop.
- ~~12. Marco jumped up on people.~~
13. Marco would bark at those who pass by.
14. Marco would attack if anyone was within reach.
15. Marco was one of those dogs that just shouldn't be there.
16. I believe that *East Wind Court, Inc.* was aware of Marco and knew that Marco was dangerous.
17. Ronald Pasman had the dog at least 2 yr period of time.

Further, for now, your Affiant sayeth naught.

Dated this 27 day of Aug. 2020.

Janice Anderson  
Janice Anderson

Subscribed and sworn to before  
me this 27 day of August,  
2020.

Carl E Baker  
Notary Public, State of South Dakota  
My Commission Expires:

Carl E Baker Notary Public  
My Commission Expires  
January 14 2025  
South Dakota



- Q. Alright. This is Collin Godfrey at 12:31 on March 9<sup>th</sup>, 2018 interviewing John Blackburn. John, could you please state your name and spell your last out?
- A. Yes, John P. Blackburn B-L-A-C-K-B-U-R-N. And Collin, I am going to want a copy of this statement, please.
- Q. Absolutely. I will get it transcribed and everything so you can have a copy.
- A. Sure. Sure. Go ahead.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

UNITED FIRE GROUP  
CLAIM NO: 4020140688  
RECORDED STATEMENT OF: John Blackburn

TRANSCRIBED DATE: 3/12/18  
RECORDED DATE: 3/9/18/  
PAGE: 2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. Okay. Let me run through the list of information that I am looking to have answered here.

A. Okay.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- Q. That will also be part of the transcription.
- A. Yup. Good.
- Q. Okay. So the property manager and yourself were not aware of the tenant dog much less it being a pit bull. Now this pit bull is chained outside. Is this something that the manager never observed or yourself?
- A. I-I never did. Whether my property manager did, I don't know. When I see chained, he could have been just tied, but he was in Mr. Passman's yard.
- Q. Mm-hm. Okay. So we-we do not know if he actually had a collar and leash on him.
- A. Oh, he was-he was-um-the dog was restrained. He was tethered, but I don't know whether it was a chain or a rope or what.
- Q. Okay. And we were unaware of it uh-are there any additional charges for tenants to have pets?
- A. No.
- Q. Okay. That means the dog owner would not have paid that \_\_\_\_\_ one. How long had the tenants lived there?
- A. I don't know. Years I would guess, but I don't know.
- Q. Okay. And that's something that before I take the statement from the PM, if we could research that for that interview to have exact dates and everything?
- \_\_\_\_\_
- Q. Okay. Let's see um-we would not know how long he would have had that dog up until this point, we do not know of any vicious tendencies because I am assuming had the dog attacked someone else we would have been aware of it.
- A. Well, I would hope I would have been, but um-I am not aware of any vicious tendency nor biting others.
- Q. So we were unaware of that. \_\_\_\_\_
- \_\_\_\_\_
- Q. And we do not know what the child was doing at the time he was bitten?
- A. True.
- Q. So we do not know if he was harassing the dog?

- A. True. I doubt if anybody does.
- Q. Okay. Would it be possible of me to get a copy of the Lease Agreement?
- A. Yes.
- Q. Okay. Is there any verbiage in there about animals?
- A. I don't know.
- Q. And uh-do you have any photos of the child's injuries?
- A. I do not.
- Q. Okay.
- A. Might ask Ron, Ron Galvin, property manager, but I don't know that.
- Q. Now, as far as all of the parties associated with this, we have you, which is our insured, Ron Galvin is the property manager, do you have his contact number?
- A. 6\_\_5-661-4366.
- Q. Okay. The dog owner is Passman, what was his first name?
- A. Ron, same as my manager.
- Q. Alright. And do you have his contact number?
- A. Passman? No.
- Q. Okay.
- A. I can look in the phone book, but it would surprise me if he has a listed phone number.
- Q. We will make a list of stuff that we would like to obtain. One is the Lease Agreement, one is photos if possible, one would be um-Passman's contact information. The owner claimant is child, let's see, his mother is, okay I remember the last name is Burg.
- A. Burgi B-U-R-G-I.
- Q. And what is the mother's name?
- A. I don't know.
- Q. Do you know the child's name?
- A. No. I sent you a copy of their letter. That's really all I have in that regard.

Q. Yeah, this letter states Kaleb Burgi. Kaleb with a K. Okay. And do you know of any witnesses?

A. I do not.

Q. Okay. Well at this time I believe that's all of the questions I have for you. Is there anything else that you would like to add?

A. Uh-hold on a minute. I am looking in the phone book to see if um-Passman has his telephone number.

Q. Alright.

A. And I doubt it because I don't think-I think the guy is disabled which usually means there is little money because of the disability. I see no listing in the phone book for him. It's not \_\_\_\_\_ by the way. I mean he is not a problem tenant.

Q. He has been a good tenant. Other than that, is there anything else that you would like to add?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. Mm-hm. Okay. Well, like I said, I believe that's all the questions I have for you at this time, so if there is anything else that you want to add...

[REDACTED]

[REDACTED]

[REDACTED]

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[illegible]

Q. Yeah, he likes to jump off the deck and catch uh-pigeons and birds \_\_\_\_\_ or he used to, he is not as \_\_\_\_\_ as he once was.

Q. He is fourteen \_\_\_\_\_ fifteen.

Q. I am in Fargo, North Dakota. However, let me, let's conclude the interview and then we can continue with the conversation.

**Q.** Yeah. Is there anything else that you would like to add to the statement?

[REDACTED]



UNITED FIRE GROUP  
CLAIM NO: 4020140688  
RECORDED STATEMENT OF: John Blackburn

TRANSCRIBED DATE: 3/12/18  
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[REDACTED]

Q. So other than that, are you aware that this was being recording?

A. Yes.

Q. And everything you answered was true and to the best of your knowledge?

A. Yes.

Q. Alright. This is Collin Godfrey at 12:50 on March 9<sup>th</sup>, 2018 now concluding this interview.

END OF CONVERSATION.

Transcribed by Casi Heeren on 3/12/18.



**15-26A-66. Length of briefs.**

- (a) **Monospaced Typeface.** Appellant and appellee briefs in monospaced typeface shall not exceed forty pages. A reply brief and amicus curiae brief shall not exceed twenty pages. A supplemental brief shall not exceed ten pages. Monospaced type shall be no more nor no less than ten characters per inch (10 cpi).
- (b) **Proportionally Spaced Typeface.** Appellant and appellee briefs in proportionally spaced typeface shall not exceed thirty-two pages. A reply brief and amicus curiae brief shall not exceed sixteen pages. A supplemental brief shall not exceed five pages. Nonetheless, briefs may exceed these page limitations if they otherwise comply with the type volume limitations in § 15-26A-66(b)(2). A proportionally spaced typeface must include serifs, but sans serif type may be used in headings and captions. A proportionally spaced typeface must be 12-point or larger, in both body text and footnotes.
  - (1) **Type Style.** Briefs must be set in a plain, roman style, although italics may be used for emphasis. Case names must be italicized or underlined. Boldface can only be used for case captions, section names, and argument headings. The use of all-capitals text may be applied only for case captions and section names. Nevertheless, quoted passages may use the original type styles and capitalization.
  - (2) **Type Volume Limitation.** Appellant and appellee briefs are acceptable if they contain no more than the greater of 10,000 words or 50,000 characters. A reply brief and amicus curiae brief are acceptable if they contain no more than half the type volume specified for appellant and appellee briefs.
  - (3) **Headings, footnotes, and quotations** count toward the word and character limitations. The table of contents, table of cases, jurisdictional statement, statement of legal issues, any addendum materials, and any certificates of counsel do not count toward the limitations.
  - (4) **Certificate of Compliance.** A brief submitted under § 15-26A-66(b) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type volume limitation. The certificate must state the number of words or characters in the brief. The person preparing the certificate may rely on the word or character count of the word-processing system used to prepare the brief.
- (c) **Upon approval of the Supreme Court,** page or word limitations for briefs may be exceeded. A written request for such approval to exceed limitations shall be filed at least ten days prior to the filing date of the brief, specifying in detail the reasons why additions are necessary and stating the number of additional pages or words requested.

**Source:** Supreme Court Rule 79-1, Rule 12 (7); SDCL Supp, § 15-26A-48; Supreme Court Rule 80-3; SL 1993, ch 394 (Supreme Court Rule 93-11); SL 1999, ch 278.



**15-26A-3. Judgments and orders of circuit courts from which appeal may be taken.**

Appeals to the Supreme Court from the circuit court may be taken as provided in this title from:

- (1) A judgment;
- (2) An order affecting a substantial right, made in any action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken;
- (3) An order granting a new trial;
- (4) Any final order affecting a substantial right, made in special proceedings, or upon a summary application in an action after judgment;
- (5) An order which grants, refuses, continues, dissolves, or modifies any of the remedies of arrest and bail, claim and delivery, injunction, attachment, garnishment, receivership, or deposit in court;
- (6) Any other intermediate order made before trial, any appeal under this subdivision, however, being not a matter of right but of sound judicial discretion, and to be allowed by the Supreme Court in the manner provided by rules of such court only when the court considers that the ends of justice will be served by determination of the questions involved without awaiting the final determination of the action or proceeding; or
- (7) An order entered on a motion pursuant to § 15-6-11.

**Source:** SDC 1939 & Supp 1960, § 33.0701; SDCL, § 15-26-1; SL 1971, ch 151, § 2; SL 1986, ch 160, § 2.



**15-6-56(a). Summary judgment for claimant.**

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of thirty days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

**Source:** SD RCP, Rule 56 (a), as adopted by Sup. Ct. Order March 29, 1966, effective July 1, 1966.





**59-3-2. Actual authority defined.**

Actual authority is such as a principal intentionally confers upon the agent, or intentionally or by want of ordinary care, allows the agent to believe himself to possess.

**Source:** CivC 1877, § 1355; CL 1887, § 3978; RCivC 1903, § 1674; RC 1919, § 1256; SDC 1939, § 3.0202.

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**59-3-2.1. Authority to request, receive, review, and disclose information regarding principal's health.**

An agent may request, receive, and review any information regarding the principal's physical or mental health, including legal, medical, and hospital records, execute any release or other documents that may be required in order to obtain such information, and disclose such information to such persons, organizations, firms, or corporations as the agent shall deem appropriate.

**Source:** SL 2004, ch 312, § 3.



**59-6-5. Notice to agent or principal.**

As against a principal both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

**Source:** CivC 1877, § 1368; CL 1887, § 3991; RCivC 1903, § 1687; RC 1919, § 1269; SDC 1939, § 3.0305.



**59-6-9. Responsibility of principal for agent's negligence or omission.**

Unless required by or under authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as part of the transaction of such business; and for his willful omission to fulfill the obligation of the principal.

**Source:** CivC 1877, § 1374; CL 1887, § 3997; RCivC 1903, § 1693; RC 1919, § 1275; SDC 1939, § 3.0309.

See Cal Civ Code, § 2338.



IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

---

No. 29443

---

TERESA BURGI, INDIVIDUALLY, AND TERESA BURGI,  
AS GUARDIAN AD LITEM FOR KALEB RAYMOND BURGI,

Plaintiffs/Appellants,

vs.

EAST WINDS COURT, INC.,

Defendant/Appellee.

---

APPEAL FROM THE CIRCUIT COURT  
FIRST JUDICIAL CIRCUIT  
YANKTON COUNTY, SOUTH DAKOTA  
The Honorable  
Circuit Court Judge David Knoff

---

**BRIEF OF APPELLEE, EAST WINDS COURT, INC.**

---

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NOTICE OF APPEAL FILED OCTOBER 16, 2020

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RESTATEMENT (SECOND) OF TORTS § 355 (1955) .....	13
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## **PRELIMINARY STATEMENT**

Citations to the Certified Record are “R.” followed by the applicable page number(s) in the Clerk’s Index. References to Appellants’ Brief are “Appellants’ Brief” followed by the applicable page number(s). Plaintiff/Appellant Teresa Burgi is the mother of the minor child who was injured and will be referred to as “Teresa Burgi.” The Plaintiff/Appellant/minor child who was injured will be referred to as “K.R.B.” Plaintiffs/Appellants are jointly referred to as “Plaintiffs”. Defendant/Appellee East Winds Court, Inc. will be referred to as “East Winds.” The Third-Party tenant/dog owner, Ronald Pasman, will be referred to as “Pasman”. Pasman’s dog, which bit K.R.B., was named “Marco”.

## **JURISDICTIONAL STATEMENT**

Plaintiffs appeal the Circuit Court’s Order (Honorable David Knoff, First Judicial Circuit, Yankton County) dated September 28, 2020, granting Summary Judgment in favor of Defendant East Winds. R.989. Notice of Entry of Order and Judgment was served via Odyssey File and Serve, and via email on September 30, 2020. R.991. Plaintiffs filed a Notice of Appeal on October 16, 2020. R.1000. This Court has jurisdiction pursuant to SDCL § 15-26A-3(1).

## **STATEMENT OF THE ISSUES**

### **Whether the Circuit Court erred in granting Summary Judgment in favor of Defendant East Winds based upon a lack of legal duty owed by East Winds to the Plaintiffs**

The Circuit Court ruled that the dog bite of K.R.B. by Marco occurred on third-party tenant, Ronald Pasman’s lot, which lot was leased to Pasman by East Winds. The Circuit Court specifically ruled that the dog bite did not take place in a common area of

East Winds' mobile home park. The Circuit Court further ruled that East Winds, as a landlord, did not owe a legal duty to the Plaintiffs to protect K.R.B. from injuries caused by another tenant's negligence, which took place on that tenant's leased lot.

- *Walther v. KPKA Meadowlands Ltd. P'ship*, 1998 S.D. 78, 581 N.W.2d 527.
- *Clauson v. Kempffer*, 477 N.W.2d 257 (S.D. 1991).
- *Smith v. Lagow Const. & Develop. Co.*, 2002 S.D. 37, ¶ 13, 642 N.W.2d 187.

The Circuit Court also ruled that no material fact exists to indicate that East Winds, as the landlord of the mobile home park, had actual knowledge that Pasman maintained a dangerous dog. Without knowledge of a dangerous dog, East Winds did not owe a legal duty to the Plaintiffs to prevent the dog from biting K.R.B. As a result, East Winds was entitled to Summary Judgment as a matter of law.

- *Ridley v. Sioux Empire Pit Bull Rescue, Inc.*, 2019 S.D. 48, 932 N.W.2d 576.

### **STATEMENT OF THE CASE**

At the conclusion of discovery, on September 28, 2020, the Circuit Court, Honorable David Knoff, First Judicial Circuit, Yankton County, granted Summary Judgment in favor of East Winds. R.989.

The subject matter of this lawsuit is a dog bite. While on another tenant's leased lot, Plaintiff K.R.B., a minor child, was bitten by another tenant's (Pasman's) dog, Marco. (R.1, Complaint ¶¶ 8-9); *see also* R.137 (Pasman's lease). Instead of suing Pasman, Plaintiffs sued East Winds. Plaintiffs' Complaint against East Winds alleges: (1) Negligence; (2) Negligence Per Se; and (3) Breach of Contract. R.1-6. (Plaintiffs' Brief does not specifically argue Plaintiffs' breach of contract or negligence per se claims. East Winds believes that Plaintiffs have waived those two legal theories via this appeal.) Plaintiffs allege that East Winds had a legal duty to protect K.R.B. from

Pasman's dog, and therefore, Plaintiffs allege that East Winds is liable to the Plaintiffs for K.R.B.'s (a minor child) injuries. (R.1, Complaint). East Winds denied liability and filed and served a Third-Party Complaint against Pasman.<sup>1</sup> R.40-44.

Following the completion of discovery, East Winds moved for Summary Judgment. R.97. East Winds' Motion for Summary Judgment argued that East Winds did not owe a legal duty to the Plaintiffs to prevent the dog of another tenant from biting K.R.B. in a non-common area of the mobile home park. R.102-105. East Winds also argued that no material fact exists to support any claim that East Winds had knowledge that Pasman was housing a dangerous dog. R.105-107.

After granting Plaintiffs two extensions to complete additional discovery and submit supplemental pleadings, a hearing was held before the Honorable David Knoff on September 22, 2020. R.1036. The Circuit Court held an additional hearing on September 25, 2020, at which time the Circuit Court articulated its ruling on the record granting East Winds' Motion for Summary Judgment. R.1074-1079. The Circuit Court specifically found that the dog bite did not take place in a common area. R.1076. The Circuit Court also ruled that Plaintiffs did not submit any evidence that created an issue of disputed material fact that East Winds, or its representatives, had any knowledge that Marco had demonstrated any dangerous behavior prior to Marco biting K.R.B. R.1077.

The Circuit Court also ruled that there was no basis for Plaintiffs' breach of contract claim against East Winds. R.1080-1081.

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<sup>1</sup> In order to permit this appeal to proceed, following the Circuit Court Order granting Summary Judgment in favor of East Winds, East Winds dismissed its Third-Party Complaint against Pasman, without prejudice. R.1009.

## **STATEMENT OF FACTS**

On September 3, 2017, K.R.B. was bitten by a dog on the lot of another East Winds' tenant. R.114. Ronald Pasman ("Pasman") was the tenant and owner of the dog. R.1. The dog's name was Marco. R.114. Pasman leased a lot for his mobile home from East Winds since 2010. R.137-141.

K.R.B. lived with his mother, Teresa Burgi ("Burgi"), and siblings in the East Winds' mobile home park. R.116 (Undisputed Facts ¶¶ 14-18). The Burgis lived four units away from Pasman. R.116 (Undisputed Fact ¶ 18); R.132 (Burgi Depo. at 34:17-20).

### **The Incident**

The incident took place entirely on the lot that Pasman leased from East Winds. R.1 (Complaint ¶¶ 8-9); R.136 (Burgi Depo. at 53:11-18). The incident did not take place in a common area. R.136 (Burgi Depo. at 53:11-18). Marco was chained to the hitch of Pasman's trailer. R.115, R.121. K.R.B. walked to the location of Marco and bent down to grab a basketball that was next to Marco when Marco bit K.R.B. in the face. R.121, R.908.

### **Marco's History**

Marco, a pit bull, was given to Pasman by his daughter, Mari Pasman ("Mari"). R.924-925 (Mari Depo. at 8:3-18; 10:2-8). Mari purchased Marco as a puppy and raised him until he became too big to live in her apartment. R.923, R.926 (Mari Depo. at 5:4-7; 16:24-17:4).

When Mari gave Marco to her father, she also purchased two "Beware of Dog" signs to post on Pasman's mobile home. R.926 (Mari Depo. at 14:9-21). Mari testified



that she purchased the signs simply because Marco was present and to give people notice that a dog was on site. R.927 (Mari Depo. at 20:25-21:7).

Although it may not be material to this appeal, contrary to Plaintiffs' assertions, Marco did not "live his life on a chain", nor was he "always chained up". See Appellants' Brief at 8, 19, 23, 25, and 32. Pasman testified that Marco was kept inside, and when he was let out, Marco would be secured to the hitch of the mobile home by a chain. R.761 (Pasman Depo. at 30:7-13). When Pasman went to work, he would leave Marco inside the mobile home. R.761 (Pasman Depo. at 30:21-31:8).

With respect to Marco's temperament, Pasman testified that Marco "never had a problem with anybody the four years I owned him, give or take about that age. The mailman used to come up to him and play with him, even when I wasn't there." R.756 (Pasman Depo. at 10:1-7). Marco "played with a lot of other people who would come up to him willingly." R.756 (Pasman Depo. at 12-13). Pasman even expressed his disbelief about the incident, stating, "I don't know, you know, but he never hurt nobody. Never showed any aggression towards anybody. Always jumped up on everybody with his big paws, you know, and start licking them and just wagging his tail. He never had a problem with anybody." R.756 (Pasman Depo. at 10, 14-18).

Mari Pasman also testified that she did not have any problems with Marco, stating that, "he was good." R. 928-929 (Mari Depo. at 23:23-24:4). Mari described Marco as a "big dog and he's friendly." R.932 (Mari Depo. at 38:25-39:1). She would have people over and never had any issues with Marco. "He never hurt anybody..." R.925 (Mari Depo. at 11:23-12:2). She admitted that Marco was a "jumper", but similar to Pasman's testimony, Mari stated that Marco jumped "in the playful way" to "give you a hug".

R.925, R.932 (Mari Depo. at 12:3-8; 39:1). Mari made it clear that Marco was not aggressive: “No, he wasn’t an aggressive dog.” R.927 (Mari Depo. at 20:24). Mari had never even heard Marco growl at anyone, nor could she envision what his growl would sound like, because Marco “just wasn’t that kind of dog.” R.929 (Mari Depo. at 26:10-13). Marco never bit anyone when Mari owned him. R.928 (Mari Depo. at 25:16-18). Mari took offense to the fact that Plaintiffs’ counsel insinuated that Marco was dangerous. “I mean, the dog was not a dangerous dog so that’s—I kind—that kind of offends me when you guys say dangerous because he wasn’t a dangerous dog.” R.932 (Mari Depo. at 39:5-6). (If a trial were necessary, issues such as whether Marco was provoked by K.R.B., or whether K.R.B. previously teased Marco, would likely be disputed facts.)

Pasman’s thirteen-year-old grandson, Joshua Eagleman, was also deposed. When Eagleman was asked whether Marco barked at people who walked by, he responded, “not really.” When Plaintiffs’ counsel tried to get Eagleman to concede that Marco barked “a little bit,” Eagleman answered, “not really.” R.909 (Eagleman Depo. at 9:13-20). When Marco did “sometimes” bark, it was not a loud bark. R.908 (Eagleman Depo. at 8:15-19). Similar to Mari Pasman’s testimony, Eagleman testified that Marco never growled at anyone. R.909, R.911 (Eagleman Depo. at 9:10-12; 17:3-4). Eagleman testified that the neighbors never complained to him about Marco “being too loud or anything like that.” R.913 (Eagleman Depo. at 28:10-14).

### **Plaintiffs’ Knowledge of Marco**

Plaintiffs lived four units away from Pasman in East Winds the entire time Pasman owned Marco. R.132 (Burgi Depo. 34:17-20). Not only had the Plaintiffs never

complained to East Winds about Marco, Plaintiffs did not even know Marco existed, let alone whether Marco had any vicarious tendencies. Teresa Burgi testified:

Q. (by Defense Counsel Arndt) Prior to the date of the incident, were you aware that Mr. Pasman had a dog?

A. (by Teresa Burgi) No.

Q. You had never seen a dog on Mr. Pasman's property?

A. No.

...

Q. But prior to the incident with K.R.B., there were a number of dogs that would have lived in the trailer court?

A. Yeah, but they had to be on leashes or in the house because there was no dogs running around. So . . .

Q. Sure. I understand. And Mr. Pasman's dog wasn't running around, was it?

A. I didn't even know he had one. So . . .

...

Q. And prior to the incident, you obviously didn't know that Mr. Pasman's dog was vicious or had any tendency to bite anyone because you didn't even know he had a dog.

A. Yep. Right. Yes.

R.131, R.134, R.136 (Burgi Depo. 30:11-15; 47:2-9; 54:3-7). Burgi also testified that despite walking within 10 feet of Pasman's house to check her mail, she did not ever notice the "Beware of Dog" signs posted on Pasman's mobile home. R.131 (Burgi Depo. at 31:17-32:4).

### **East Winds' Knowledge of Marco**

Like Teresa Burgi, prior to the incident, East Winds' owner, John Blackburn, did not know Pasman had a dog. R.237 (Blackburn Depo. at 16:17-19). East Winds'

property manager, Ron Galvin, learned that Pasman had a dog a few months before the incident when he happened to see Marco chained out front of Pasman's mobile home. R.224 (Galvin Depo. at 23:3-13). At that time, Galvin stopped and talked to Pasman about Marco. R.224 (Galvin Depo. at 23:3-13). When he approached, Marco did not bark and did not display any dangerous propensities. R.224 (Galvin Depo. at 23:3-13); R.153-155. Pasman never indicated or advised East Winds that Marco was dangerous. R.224 (Galvin Depo. at 23:3-13; 25:9-20).

Prior to the incident with K.R.B., East Winds had never received any notice or complaint from any tenant complaining about Marco. R.224 (Galvin Depo. at 23:3-13; 25:9-20); R.153.

### **STANDARD OF REVIEW**

This Court reviews a grant of summary judgment *de novo*. *Heitmann v. Am. Fam. Mut. Ins. Co.*, 2016 S.D. 51, ¶ 8, 883 N.W.2d 506, 508. When reviewing a grant of summary judgment, the Court decides “whether genuine issues of material fact exist and whether the law was correctly applied.” *Id.* (quoting *Ass Kickin Ranch LLC v. N. Star Mut. Ins. Co.*, 2012 SD. 73, ¶ 6, 822 N.W.2d 724, 726). If no material facts are in dispute, the “review is limited to determining whether the trial court correctly applied the law.” *Id.* This Court “will affirm a circuit court’s decision so long as there is a legal basis to support its decision.” *Id.* “[S]ummary judgment is a preferred method for disposing of any legally inadequate claim.” *Farm Credit Servs. of Am. v. Dougan*, 2005 S.D. 94, ¶ 7, 704 N.W.2d 24, 27.

Negligence is the breach of a duty owed to another, the proximate cause of which results in an injury. Consequently, before a defendant can be held liable for negligence, the defendant must have breached a duty of care owed

to the plaintiff. Whether a duty exists is a question of law; whether a defendant's conduct constitutes a breach of a duty is a question of fact.

*Ridley v. Sioux Empire Pit Bull Rescue, Inc.*, 2019 S.D. 48, ¶ 13, 932 N.W.2d 576, 580, (internal citations omitted).

“Summary judgment is proper in negligence cases if no duty exists as a matter of law.” *Pierce v. City of Belle Fourche*, 2001 S.D. 41, ¶ 8, 624 N.W.2d 353, 355 (citing *Peterson v. Spink Elec. Corp. Inc.*, 1998 S.D. 60, ¶¶ 1-2, 578 N.W.2d 589, 591).

Pursuant to SDCL § 15-6-56(e), the nonmoving party in a summary judgment proceeding “must set forth specific facts showing that there is a genuine issue for trial.” *Roden v. Gen. Cas. Co.*, 2003 S.D. 130, ¶ 31, 671 N.W.2d 622, 629 (quoting SDCL § 15-6-56(e)). A nonmoving party may not rest on mere conclusory statements. *Id.* Instead, the nonmoving party must submit admissible evidence to create a genuine issue of fact. *Luther v. City of Winner*, 2004 S.D. 1, ¶ 11, 674 N.W.2d 339, 344-45. “[T]hose resisting summary judgment [are required to] show that they will be able to place sufficient evidence in the record at trial to support findings on all the elements on which they have the burden of proof.” *Chem–Age Industries, Inc. v. Glover*, 2002 S.D. 122, ¶ 18, 652 N.W.2d 756, 765.

## **ARGUMENT**

### **I. ISSUES WAIVED ON APPEAL**

Plaintiffs appear to have waived two of their three causes of action by not addressing those causes of action in Appellants' Brief. Count two of Plaintiffs' Complaint alleges that East Winds was liable under a theory of “Negligence per se,” for allegedly violating SDCL § 40-34-14. R.5. SDCL § 40-34-14 provides a definition of a vicious dog, but does not create a private cause of action. The preceding statute, SDCL

§ 40-34-13, provides authority for declaration of a public nuisance for a person who *owns* or *keeps* a dog. It is undisputed that East Winds did not own or keep Marco. These statutes are inapplicable to Plaintiffs' claims against East Winds, which is presumably why Plaintiffs have abandoned their negligence per se claim.

Count three of Plaintiffs' Complaint is a cause of action for "breach of contract". That cause of action alleges that East Winds breached its lease agreement with the Plaintiffs by allowing Pasman to have a dog. R.6. No such provision exists in any lease agreement between the Plaintiffs (or Plaintiffs' sublessor) and East Winds.

Neither Appellants' Brief nor Docketing Statement (R. 998) make arguments for negligence per se or breach of contract. Plaintiffs have abandoned those causes of action.

## **II. PLAINTIFFS' NEGLIGENCE CLAIM**

### **A. East Winds Did Not Owe Plaintiffs a Legal Duty Because the Incident Took Place on Pasman's Leased Property**

The Circuit Court properly determined that East Winds, as a landlord, did not owe a legal duty to the Plaintiffs to protect K.R.B. from the negligence of a third-party (Pasman) for harm that K.R.B. incurred while K.R.B. was on Pasman's leased property.

In order for a defendant to be liable to a plaintiff for negligence, the plaintiff must establish that the defendant owed plaintiff a legal duty.

Negligence is the breach of a duty owed to another, the proximate cause of which results in an injury. Consequently, before a defendant can be held liable for negligence, the defendant must have breached a duty of care owed to the plaintiff. Whether a duty exists is a question of law; whether a defendant's conduct constitutes a breach of a duty is a question of fact.

*Ridley v. Sioux Empire Pit Bull Rescue, Inc.*, 2019 S.D. 48, ¶ 13, 932 N.W.2d 576, 580.

The existence of a duty owed by a defendant to a plaintiff is elemental to a negligence action and therefore "[b]efore a defendant can be held liable for negligence, the defendant

must have breached a duty of care owed to the plaintiff.” *Locke v. Gellhaus*, 2010 S.D. 11, ¶ 11, 778 N.W.2d 594, 597; *see also Janis v. Nash Finch Co.*, 2010 S.D. 27, ¶ 8, 780 N.W.2d 497, 500. “[T]he existence of a duty is a question of law to be determined by the court.” *Janis*, 2010 S.D. 27, ¶ 8, 780 N.W.2d at 500 (quoting *Small v. McKennan Hosp.*, 403 N.W.2d 410, 413 (S.D. 1987)).

“Generally, the law imposes no duty to prevent the misconduct of a third person.” *State Auto Ins. Companies v. B.N.C.*, 2005 S.D. 89, ¶ 22, 702 N.W.2d 379, 387. This general rule applies to the landlord/tenant relationship. “We hold that no special relationship exists between a landlord and a tenant.” *Walther v. KPKA Meadowlands Ltd. P’ship*, 1998 S.D. 78, ¶ 42, 581 N.W.2d 527, 535; *Smith v. Lagow Const. & Develop. Co.*, 2002 S.D. 37, ¶ 13, 642 N.W.2d 187, 190-91. “A landlord, having parted with full possession of the premises to the tenant is not liable for injury to third persons caused by the tenant’s negligence.” *Clauson v. Kempffer*, 477 N.W.2d 257, 259 (S.D. 1991); *see also Hendrix v. Schulte*, 2007 S.D. 73, ¶ 9, 736 N.W.2d 845, 848.

“The law of premises liability is based on possession and control.” *Clauson*, 477 N.W.2d at 259 (citing W. Keeton, D. Dobbs, R. Keeton, D. Owen, Prosser and Keeton on the Law of Torts § 57, at 386). Generally, “a lessor of land is not subject to liability to his lessee or others upon the land with the consent of the lessee ... for physical harm caused by any dangerous condition which comes into existence after the lessee has taken possession.” *Id.* (citing RESTATEMENT (SECOND) OF TORTS § 35” (1955)). The rationale for this policy is that:

When land is leased to a tenant, the law of property regards the lease as equivalent to a sale of the premises for the term. The lessee acquires an estate in land, and becomes for the time being both owner and occupier,

subject to all of the responsibilities of one in possession, to those who enter upon the land and those outside of its boundaries.

*Clauson*, 477 N.W.2d at 259 n.2 (quoting Prosser & Keeton, *supra* § 63, at 434); *see Burgess v. Tackas*, 708 ”E.2d 285, 297-98 (Ct. Ap. Ohio 1998) (“It is well established that a lease transfers both possession and control of the leased premises to the tenant.”).

Although the “landlord-tenant arrangement creates no special relationship,” “landlords have a duty to maintain the safe physical condition of the *common areas* within their *exclusive* control[.]” *Smith*, 2002 S.D. 37, ¶ 13 (citing *Walther*, 1998 S.D. 78, ¶ 42) (emphasis added); *see also, Jensen v. Mason*, 592 N.W.2d 33, 39 (Iowa 1999) (holding that in order for landlord to be liable for injuries caused by tenant’s dog, the injury must have occurred in a common area).

There is no dispute of fact that K.R.B. was bitten by Marco on Pasman’s leased lot. This incident did not occur within a common area. R.2 (Complaint ¶ 9); R.136 (Burgi Depo. at 53:11-18). As the Circuit Court stated via its ruling (R.1073), this fact is fatal to Plaintiffs’ claim against East Winds. East Winds did not have legal duty to protect K.R.B. from injuries that K.R.B. incurred on a separate tenant’s (Pasman’s) leased lot. As a matter of law, East Winds’ only potential liability to the Plaintiffs from this dog bite would arise if the incident occurred on a common area in which East Winds maintained exclusive possession and control. *Smith*, 2002 S.D. 37, ¶ 13.

#### **B. East Winds Lacked Knowledge of Marco’s Dangerous Propensities**

Even if K.R.B. would have been bitten in a common area controlled by East Winds, in order to be liable to the Plaintiffs, as a landlord, Plaintiffs would need to present some evidence that East Winds had prior knowledge that Marco was dangerous. No such evidence exists.



## 1. Standards of Care in Dog Bite Cases

In *Ridley v. Sioux Empire Pit Bull Rescue, Inc.*, 2019 S.D. 48, 932 N.W.2d 576, this Court made it clear that the *owner* of the dog must have knowledge of the dog's dangerous propensities, or that the dog bite was otherwise foreseeable, before a legal duty is created between the dog owner and the injured party.

Under South Dakota law, owners of domesticated animals may be held liable for harm caused by their pet. In such a case against a dog owner, the plaintiff must establish that as an ordinary, prudent person, the owner should have foreseen the event that caused the injury and taken steps to prevent the injury. Such liability may arise depending upon the kind and character of the particular animal concerned, the circumstances in which it is placed, and the purposes for which it is employed or kept. If a plaintiff proves that the dog owner knew or had reason to know of the dog's dangerous propensity the plaintiff will be deemed to have established the foreseeability element of negligence.

*Ridley v. Sioux Empire Pit Bull Rescue, Inc.*, 2019 S.D. 48, ¶14, 932 N.W.2d 576, 580 (internal citations omitted). In *Ridley*, the Circuit Court ruled that the dog owner (or prospective dog owner of a foster dog) was entitled to summary judgment for lack of legal duty owed to the plaintiff based upon facts that made the dog bite not reasonably foreseeable. This Court affirmed that summary judgment award to the possessor (foster care owner) of the dog.

East Winds' argument is even stronger than the defendant in *Ridley*. East Winds was neither the owner nor the possessor of the dog that bit K.R.B. A strong argument can be made that even Pasman did not possess the requisite knowledge of Marco's dangerous propensities to invoke liability to the Plaintiffs. However, East Winds—as the only party the Plaintiffs have sued—is one step removed from any knowledge that Pasman may have had regarding Marco's prior behavior. East Winds' representatives were deposed by Plaintiffs' counsel and specifically denied knowledge that Pasman's dog was

dangerous. As a matter of law, without East Winds having actual knowledge that Pasman's dog was dangerous, East Winds owed no legal duty to protect K.R.B. from Pasman's dog.

Plaintiffs cite *Rowland v. Log Cabin, Inc.*, 2003 S.D. 20, 658 N.W.2d 76 in support of their argument that they have put forth enough evidence to survive summary judgment. *Rowland* is distinguishable. In *Rowland*, the plaintiff was a business invitee and the defendant was a bar owner—not a landlord. The Supreme Court held that the defendant/bar owner's decision to allow a large dog to roam freely throughout the bar, with potentially drunk patrons, created a question of fact regarding the foreseeability of a patron eventually being bit. In contrast, K.R.B. was a trespasser on the Pasman's leased lot. East Winds, as the landlord, had no way of knowing that K.R.B. was going to be on Pasman's lot, let alone knowledge that Pasman's dog created some kind of risk to K.R.B. *Rowland* does not create a legal duty owed by East Winds to the Plaintiffs, as the facts of these two cases are materially distinct.

Plaintiffs also cite *Gehrts v. Batteen*, 2001 S.D. 10, 620 N.W.2d 775. *Gehrts* involved the standard applicable to a dog *owner*, not a landlord of a third-party tenant who owned a dog. Again, East Winds is once removed from any knowledge the dog owner (Pasman) may have had.

*Gehrts* stated, “[h]owever, in certain instances a cause of action for negligence can survive without the *owner's* actual knowledge of an animal's dangerous propensities. When the *owner* does not know of the animal's dangerous propensities, the ordinary negligence standard of foreseeability will still be applied.” *Id.* at ¶ 9, 620 N.W.2d 775, 778, (emphasis added). The *Gehrts* Court went on to affirm Summary

Judgement in favor of the dog owner based upon a lack of facts indicating the dog owner should have known the dog bite incident was going to occur, which created a lack of foreseeability, and therefore a lack of a legal duty owed by the dog owner to the bitten plaintiff. Similarly, East Winds' lack of knowledge that Marco would present a danger to K.R.B. eliminates any legal duty that East Winds would owe to the Plaintiffs.

A strong majority of jurisdictions have held that a landlord is not liable for injuries resulting from the dog bite in a common area absent *actual knowledge* of the animal's dangerous propensities. *See, e.g., Twogood v. Wentz*, 634 N.W.2d 514 (N.D. 2001); *Strunk v. Zoltanski*, 468 N.E.2d 13 (N.Y. Ct. App. 1984); *Giaculli v. Bright*, 584 So.2d 187 (Fla. App. 1991); *Compagno v. Monson*, 580 So.2d 962 (La. Ct. App. 1991); *Goddard by Goddard v. Weaver*, 558 N.E.2d 853 (Ind. App. 1990); *Gibbons v. Chavez*, 160 Ariz. 73, 770 P.2d 377 (Ariz. App. 1988); *Szkodzinski v. Griffin*, 431 N.W.2d 51 (Mich. App. 1988); *Lucas v. Kriska*, 522 N.E.2d 736 (Ill. Ct. App. 1988); *Palermo v. Nails*, 483 A.2d 871 (Pa. 1984); *Uccello v. Laudenslayer*, 44 Cal.App.3d 504, 118 Cal.Rptr. 741 (1975); *Batra v. Clark*, 110 S.W.3d 126, 129 (Tex. Ct. App. 2003) (cumulative citation to jurisdictions requiring actual knowledge to impose liability on a landlord). Further, as the Nebraska Supreme Court has recognized, a landlord "is under no duty to inspect the premises for the purpose of discovering the existence of a tenant's dangerous animal; only when the landlord has actual knowledge of the animal, coupled with the right to have it removed from the premises, does a duty of care arise." *Plowman v. Pratt*, 684 N.W.2d 28, 31 (Neb. 2004).

## **2. Lack of Evidence of East Winds' Knowledge of Marco's Dangerousness**

Plaintiffs present no evidence that East Winds had actual knowledge of Marco's dangerous propensities. Plaintiffs' best argument is a subjective argument that East Winds *should* have known that Marco presented a danger to K.R.B. Not only is that the incorrect standard, it also lacks supporting evidence.

### **(a) Witnesses Testimony**

During their depositions, East Winds' owner, John Blackburn, and property manager, Ron Galvin, both denied any reports from anyone that Marco was present, or presented a danger. Pasman (Marco's owner), Mari Pasman (Marco's original owner), and Eagleman (Pasman's grandson) each answered specific questions about Marco's character traits and each specifically denied that Marco was dangerous.

Plaintiffs argue that the Affidavit of Pasman's neighbor, Janice Anderson, creates an issue of material fact that should have prevented Summary Judgment. The Circuit Court addressed this argument and concluded that Anderson's Affidavit is speculative. (R.1075.) Although Anderson's Affidavit concludes that she believes East Winds should have known that Marco was dangerous, it lacks any facts that would support such a subjective belief. It is undisputed that Anderson did not ever complain or report Marco's behavior to East Winds.

It is also undisputed that K.R.B.'s own mother (Plaintiff Teresa Burgi), did not even realize that Pasman had a dog, let alone make any prior complaints to East Winds that Marco was dangerous.

**(b) Use of this Dog Bite Incident to Establish Knowledge of Dangerousness**

Plaintiffs argue that this incident—Marco’s biting of K.R.B. on Pasman’s lot—is sufficient evidence of Marco’s dangerousness. This Court has “expressly rejected” attempts by plaintiffs to use the attack at issue as the evidence necessary to establish the requisite notice of a dog’s dangerous propensities. *Gehrts*, 2001 S.D. 10, ¶ 10 (citing *Tipton v. Town of Tabor*, 1997 S.D. 96, ¶ 23, 567 N.W.2d 351, 361). “While other jurisdictions may allow juries to determine after the fact whether the animal had dangerous propensities, such reasoning has been expressly rejected in South Dakota.” *Id.*

**(c) Use of Dog Breed as Evidence of Dangerousness**

Plaintiffs also repeatedly refer to Marco as a “big-bodied,” “dangerous” “Pitbull”. This Court has also expressly rejected arguments that a dog’s breed is evidence of its dangerous propensities. “South Dakota does not support such breed-specific standard of care. We instead recognize that ‘dogs are presumed tame and docile and the burden is on a plaintiff to show otherwise.’” *Ridley*, 2019 S.D. 48, ¶ 18 (quoting *Tipton*, 1997 S.D. 96, ¶ 24).

**(d) Beware of Dog Signs**

Plaintiffs also argue that the “Beware of Dog” signs on Pasman’s trailer impute knowledge of a dangerous dog. The Circuit Court correctly rejected this argument. “...the presence of a beware of dog sign standing alone is insufficient to impute notice of a dog’s viciousness. The Court believes there’s good public policy for that rule.” R.1079; *see also Dougherty v. Hibbits*, N14C-05-105 PRW, 2015 WL 5168157, at \*5-6 (Del. Sup. Ct. Aug 31, 2015) (Placement of “beware of dog” signs is insufficient to demonstrate that a landlord knows of a dogs dangerous propensities); *Smedley v.*

*Ellinwood*, 21 A.D.3d 676, 677 (N.Y. App. Div. 2011) (“the presence of a ‘Beware of Dog’ sign, standing alone, is insufficient to impute notice of a dog’s viciousness” on a landlord or even that the dog is vicious or dangerous). As Mari Pasman testified, she bought the signs for her father because Marco was big and she wanted a warning for others that Marco was on the premises. R.927 (Mari Depo. at 20:22-21:7).

**(e) Miscellaneous Arguments of Dangerousness**

Plaintiffs refer to various other miscellaneous facts in an attempt to establish East Winds’ knowledge that Marco was dangerous. Those facts include that Marco was secured on a “thick chain”, “he jumped on people”, “he barked”, and his vet records indicate Marco was “head strong”. There is little evidence, and Plaintiffs make no effort to demonstrate, that East Winds was aware of any of these facts. Even if East Winds had been aware of these facts, and even when construed liberally in Plaintiffs’ favor, those facts do not establish the requisite knowledge to conclude that East Winds knew that Marco was a dangerous dog, and/or that Marco presented a danger to K.R.B.

**(f) East Winds did not have an Independent Duty to Investigate Marco**

Plaintiffs also argue that East Winds failed in their duty to protect K.R.B. because they failed to investigate Pasman’s premises to determine if Marco was dangerous. As a starting point, it is illogical to impose a duty upon a landlord to investigate a problem in which they have no knowledge. East Winds barely had knowledge that Marco existed, let alone reports or observations that Marco was dangerous. Again, Theresa Burgi, after living a few units away from Pasman for the four years Marco lived with Pasman, did not even know Marco existed, let alone that he posed a danger.

Further, other jurisdictions have specifically concluded that a landlord does not have an independent duty to investigate a tenant's pet. "A landlord has no duty to inspect the premises to discover the existence of a tenant's dangerous animal." *Feister v. Bosack*, 497 N.W.2d 522, 526 (Mich. Ct. App. 1993); *Uccello*, 44 Cal.App.3d at 514 ("a landlord is under no duty to inspect the premises for the purpose of discovering the existence of a tenant's dangerous animal"); *Bessent v. Matthews*, 543 So.2d 438, 439-40 (Fla. Ct. App. 1989) (holding that landlord had no duty to make periodic inspections of leased property to determine if dog was dangerous).

Plaintiffs also ignore the fact that Ron Galvin did inquire about Marco "a couple of months before the incident." R.224 (Galvin Depo. at 23:3-6). Galvin testified that he stopped and talked to Pasman about Marco. During that interaction, Marco did not bark or display any dangerous propensities, nor did Pasman indicate that Marco was dangerous.

**(g) Lack of Evidence of East Wind's Knowledge that Marco was Dangerous Supports the Circuit Court's Order of Summary Judgment**

The Circuit Court gave Plaintiffs two separate discovery extensions in an effort to develop facts to indicate East Winds had knowledge of Marco's dangerous propensities. Plaintiffs were unable to discover such facts, and thus, were unable to meet their burden. Without such evidence, East Winds did not owe Plaintiffs a legal duty to protect K.R.B. from Marco.

Many other jurisdictions have upheld summary judgment in favor of landlords for the same reason—a lack of evidence indicating the landlord had actual knowledge of the dog's dangerous propensities. *See e.g., Twogood v. Wentz*, 634 N.W.2d at 520 (affirming

summary judgment due to lack of control; landlord's denial of knowledge of the dog's dangerous propensities; and plaintiff's failure to present evidence otherwise); *Compagno*, 580 So.2d at 966 (affirming summary judgment in favor of landlord where "the record is devoid of any evidence the landlords had actual knowledge of the dog's vicious propensity."); *Gibbons*, 770 P.2d at 380 (affirming summary judgment in favor of landlord because plaintiff failed to present evidence of the landlord's knowledge of a dog with dangerous propensities); *Batra*, 110 S.W.3d at 129 (reversing trial court's denial of landlord's motion for directed verdict, holding that plaintiff failed to present evidence that landlord had actual knowledge of dog's vicious tendency); *Georgianna v. Gizzy*, 483 N.Y.S.2d 892, 894 (Sup. Ct. N.Y. Onondaga Cnty. 1984) (granting summary judgment in favor of landlord, where landlord had no knowledge of dog's dangerous tendencies); *Plowman*, 684 N.W.2d at 31-32 (granting summary judgment where landlord knew dog barked at repairman, as that was insufficient to show actual knowledge of dangerous propensity); *see also* Danny R. Veilleux, Annotation, *Landlord's Liability to Third Person for Injury Resulting From Attack on Leased Premises by Dangerous or Vicious Animal Kept by Tenant*, 87 A.L.R.4th 1004 § 2a (1991).

## CONCLUSION

The fact that K.R.B. was bitten by Marco is unfortunate. However, the facts indicate this incident was unexpected and unpredictable—to everyone.

Plaintiffs did not ever make a claim against Pasman, Marco's owner. Even if Plaintiffs had made such a claim, Pasman himself would have a strong defense based upon the lack of any evidence that Marco previously displayed dangerous behavior. Plaintiffs' Complaint against East Winds, as Plaintiffs' landlord, is even more legally



tenuous. The incident did not take place on a common area that East Winds controlled. There is also no evidence to indicate East Winds had knowledge that Marco was a dangerous dog.

The Circuit Court properly awarded Summary Judgment to East Winds, as Plaintiffs failed to put forth evidence to support a legal duty owed by East Winds to the Plaintiffs. East Winds respectfully requests that the Circuit Court's ruling granting Summary Judgment in favor of East Winds be affirmed.

Dated at Sioux Falls, South Dakota, this 28th day of July, 2021.

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing “Brief of Appellee” was filed electronically with the South Dakota Supreme Court by submitting via email to the Clerk’s office at SCCLerkBriefs@uds.state.sd.us, and that the original and two copies of the same were filed by mailing the same to 500 East Capitol Avenue, Pierre, South Dakota, 57501-5070, this 28th day of June, 2021. The undersigned further certifies that an electronic copy of the foregoing “Brief of Appellee” was emailed and sent via U.S. mail to the attorneys set forth below, this 28th day of June, 2021:

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## CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Brief of Appellee complies with the type volume limitations set forth in SDCL § 15-26A-66(b)(2). Based on the information provided by Microsoft Word 2016, this Brief contains 5,527 words, excluding the table of contents, table of authorities, jurisdictional statement, statement of legal issues, any addendum materials, and any certificates of counsel. This Brief is typeset in Times New Roman (12 point) and was prepared using Microsoft Word 2016.

Dated at Sioux Falls, South Dakota, this 28th day of July, 2021.

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IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA  
NO. 29443

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TERESA BURGI, INDIVIDUALLY, AND TERESA BURGI, AS GUARDIAN  
AD LITEM FOR KALEB RAYMOND BURGI,

Plaintiffs and Appellants,

vs.

EAST WINDS COURT, INC.,  
Defendant and Appellee.

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APPEAL FROM THE CIRCUIT COURT  
FIRST JUDICIAL CIRCUIT  
YANKTON COUNTY, SOUTH DAKOTA

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THE HONORABLE DAVID KNOFF  
CIRCUIT JUDGE

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**APPELLANTS' REPLY BRIEF**

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**NOTICE OF APPEAL FILED: OCTOBER 23, 2020**

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## **JURISDICTIONAL STATEMENT**

Appellant's Jurisdictional Statement is outlined in the Appellant's Brief.

## **STATEMENT OF ISSUES**

Appellant's Statement of the Issues is outlined in the Appellant's Brief.

## **STATEMENT OF THE FACTS**

Appellant's Statement of the Facts is outlined in the Appellant's Brief.

## **REPLY ARGUMENT**

This case is not a case that can be decided on Summary Judgment. Appellee's brief is riddled with factual conclusions that are contradicted by the deposition testimony of numerous witnesses. For example, Appellee's entire argument is based on the assumed fact that neither Blackburn nor his agent, Galvin, had actual knowledge that the Pitbull was dangerous. As will be set forth from an analysis of the facts below, both Blackburn and his agent Galvin knew that the Pitbull was dangerous, and therefore *East Winds Court, Inc.* knew about the Pitbull and that it was dangerous. Additionally, whether or not Blackburn and/or Galvin (and therefore *East Winds Court, Inc.*) knew about the dangerous Pitbull is a question of fact for the jury to decide. (See *Rowland v. Log Cabin, Inc.*, 658 N.W.2d 76 (2003 SD 20)).

## **ISSUE I**

**THERE ARE GENUINE ISSUES OF MATERIAL  
FACT AS TO WHETHER EAST WINDS COURT, INC.  
HAD ACTUAL KNOWLEDGE OF THE PITBULL'S  
DANGEROUS PROPENSITIES.**

**1. THERE IS A MATERIAL QUESTION OF FACT AS TO WHETHER OR NOT BLACKBURN KNEW ABOUT THE DANGEROUS PITBULL.**

First, Appellee's brief and argument assume as a fact that Blackburn did not know about the dangerous Pitbull. Appellee argues factual conclusions that Blackburn did not know about the dangerous Pitbull. That fact has not been established. It is an assumed fact. (Appellee's Brief at 16).

Blackburn, the owner of *East Winds Court*, indicated in his deposition that he had not ever seen the two large "Beware of Dog" signs until his deposition. (RA 581, Blackburn deposition page 18 lines 23-25 page 19 lines 1-2)(RA 582). In Plaintiff's Second Set of Admissions Plaintiff requested Defendant admit or deny the following:

10. Admit or deny that the "Beware of Dog" signs are visible from Meadow View Road.

RESPONSE: East Winds objects to the form of the Request as it is vague and ambiguous. The Request does not identify the individual to whom the sign may be visible. Without waiving this objection, East Winds admits that the sign may be visible to some people from Meadow View Road (RA 886.) The visibility of the sign may depend upon the quality of the person's eyesight and/or the person's vantage point from the Road, as well as the time of day the person is attempting to view the sign.(RA 886).

(Emphasis added).

Thus, *East Winds Court* has put Blackburn and Galvin's eyesight at issue. Surely, that is a factual issue for a jury to decide.

Bear in mind that Blackburn's testimony is in sharp contrast with other testimony in the record. For instance, young Josh Eagleman testified:

- Q. All right. Do you think that all of the neighbors knew that your grandpa had Marco?  
A. Yeah.  
Q. How would they have known that Josh?  
A. Because he is outside all of the time.



(Eagleman Deposition page 26, lines 9-13) (RA 913) Eagleman (who lived with his grandpa for a time) also testified that everyone knew about the Pitbull :

- Q. Do you know, was your grandpa allowed to have Marco at the trailer park?
- A. Yeah, he was allowed to.
- Q. Did they—did your grandpa say “Hey, you guys have to hide Marco because he’s not allowed in the trailer park”?
- A. No.
- Q. In your opinion, did pretty much everybody there know that he had Marco?
- A. Yeah.

If everyone in the whole trailer park knew, then it is reasonable to conclude that Blackburn knew. Blackburn knew and therefore he had actual knowledge of the fact.

S.D.C.L. §17-1-2. Blackburn, in the five years Pasman had the Pit Bull, must have seen the signs. (R. Pasman deposition page 60, lines 11-17)(RA 768).

It is notable, that after the Burgi mauling, *East Winds Court* forced multiple tenants to remove Pitbulls. Blackburn testified:

- Q. Since September 3<sup>rd</sup> of 2017, how many tenants have had their dogs removed from the properties? Have you made tenants remove dogs from the properties?
- A. I’m thinking at least three, maybe four.
- Q. And what kind of dogs were those, do you recall?
- A. To my knowledge, at least – in each instance it was a pit bull. I can think of three specifically.

(Blackburn Deposition page 24, lines 7-13)(RA 239).

It is clear from the evidence that prior to the Burgi mauling, *East Winds Court* simply looked the other way with plenty of large, aggressive Pitbull dogs. At the very least, genuine issues of material fact exist in this case precluding summary judgment. This case should be reversed and remanded for trial on the merits.

2. **EAST WINDS COURT RETAINED CONTROL OVER THE LEASED PREMISES.**

Appellee argues that it did not owe a duty to K.RB. because the attack technically occurred on Pasman's leased trailer pad. (Appellee's Brief pages 10-11). That is not the only rule applicable in this case. As will be explained below, that rule is inapplicable herein. The rule that a landlord having parted with full control over the leased premises is not liable to a third person injured on the leased premises does not apply where (as here) the landlord reserves some control over the leased premises. Here, the landlord expressly retained control over the types of animals allowed in the trailer park. In that situation, the landlord may be held liable if the landlord had actual or constructive notice of the claimed problem. (*See, Boe v. Healy*, 84 S.D. 155, 168 N.W.2<sup>nd</sup> 710 (1969). Landlords who insist on control over the leased premises bear responsibility to their tenants if the danger is foreseeable. (*See, Smith v. Lagow Construction and Developing Co.*, 642 N.W.2<sup>nd</sup> 187 (S.D. 2001).

The lease Blackburn (an experienced, licensed attorney) prepared specifically prohibited this type of animal. In other words, here, the landlord testified that the trailer court reserved the right of re-entry and reserved the right to control what was allowed on the leased premises. *Cf., Clauson v. Kempffer*, 477 N.W.2d 257 (S.D. 1991). Therefore, *East Winds Court* did not part with full possession of the leased premises.

Pasman's lease was "month-to-month." Specifically, ¶ 14 of Pasman's lease stated (in pertinent part):

14. This is a month-to-month lease unless otherwise specified in writing and requires TENANT to give LANDLORD in writing at least thirty (30) days' notice before vacating the premises. (RA 945)

No one forced *East Winds Court* to continue to lease to Pasman. They chose to do so knowing full well that he had a large, aggressive dog with two “Beware of Dog” signs publicly posted on the outside of his trailer. In the four-to-five-year time span that Pasman had the Pitbull, *East Winds Court* renewed his month-to-month lease well over 40 separate times. Pasman also operated a sex shop out of his trailer in violation of ¶ 25 of his lease with East Winds Court. (Motion Hearing Transcript of 05/07/2020 on page 13 lines 7 – 11) (RA 840). Specifically, ¶25 of his lease prohibited.

25. Operation of any business from the leased premises is prohibited without prior, written permission of the LANDLORD. (RA 946)

In other words, yes, *East Winds Court* had a lease. And yes, *East Winds Court* ignored its’ own leases. In the present case, not only did *East Winds Court* have the express right to re-enter and take over possession of the leased premises, but it also retained control over the dogs and other animals allowed on the leased premises. Specifically, ¶13 of his lease stated:

13. PETS: TENANT assumes all responsibilities for pets. Dogs are only allowed on TENANT'S property. Dogs are not allowed to run free in East Winds Court. Barking of dogs, day or night is not allowed. Only harmless, non-vicious, safe, pets such domestic dogs, housecats and indoor birds are allowed within East Winds Court, Inc. without the prior written permission of the LANDLORD. TENANTS are prohibited from keeping any other type or description of pet or animal or reptile. If a TENANT has a noisy pet such as a barking dog, the TENANT will have to purchase at the TENANTS own expense a muzzle and keep it on his /her dog at all times to prevent barking. (RA 945)

It is a well-established principle that when a landlord reserves control over a portion of the premises, the failure to exercise that control over the premises creates tort liability. *Boe v. Healy*, 84 S.D. 155, 159-160, 168 N.W.2d 710, 712-13 (1969). And it is

clear that before K.R.B. was mauled, *East Winds Court* did not enforce its own lease. East Winds ignored the express lease provisions allowing only harmless, non-vicious dogs as pets. As Marie Pasman testified, there were a lot of other large, aggressive dogs out at the trailer park:

A. Okay. Well, I guess that --the dog part makes sense because there is a lot of other big dogs that are jumping at the fence when you go down the street and – you know, in his neighborhood so I could see that.

(M.Pasman Deposition page 17, lines 16-19)(RA 926). Furthermore, Mari Pasman made it very clear that :

A. Like I said, as you go up and down the road, I mean, there were other big dogs who, like any other dogs, were lunging at the fence or whatever, you know, the case may be or running up and down the yard.

(M.Pasman Deposition page 33, lines 19-22) (RA 930).

The fact that East Winds Court retained control of the leased premises is proven by the fact that after the Burgi mauling, *East Winds Court* forced a number of tenants to get rid of their Pitbull dogs. (Blackburn Deposition page 24, lines 7-13) (RA 616). The South Dakota rules of evidence expressly permit this evidence to prove “control, or the feasibility of precautionary measures”. S.D.C.L. §19-19-407. At the very least, genuine issues of material fact exist as to whether or not *East Winds Court* actually enforced its’ own lease. (See also, Jay Zitter, Annotation, *Effect as Between Landlord and Tenant, of Lease Clause Restricting Keeping of Pets*, 114 A.L.R.5<sup>th</sup> 443 §18 (2003).

A reasonable juror could infer from these facts that East Winds trailer court and Blackburn knew about the dog and that it was dangerous. Furthermore, a reasonable juror could find that East Winds Court retained control over the leased premises, specifically

over the types of dogs allowed in the trailer park and that it chose to look the other way. In other words, a reasonable juror, upon examining this evidence, might reach very different factual conclusions than the trial court. At the very least, genuine issues of material fact exist, making summary judgment inappropriate in this case. The case should be tried on the merits. *Dahl v. Sittner*, 429 N.W.2d 458 (S.D. 1988).

## **ISSUE II**

### **THERE ARE GENUINE ISSUES OF MATERIAL FACT AS EAST WINDS COURT, INC.'S PROPERTY MANAGER HAD KNOWLEDGE OF THE PITBULL'S DANGEROUS PROPENSITIES.**

Appellee's brief also requires the Court to accept as fact their self-serving statement that Galvin did not know about the dangerous Pitbull. (Appellee's Brief at 16). Again, this factual assertion is contradicted by Galvin's own testimony as well as various other witnesses.

Pasman testified that he had the Pitbull for four to five *years* before the K.R.B.'s injury (not the couple of months that Galvin testified to). Galvin testified that he drove through the trailer court multiple times a day, every day, back and forth. Galvin was "always out there," i.e., at the trailer park. (R. Pasman deposition page 72 line 11)( RA 771). That works out to over a thousand times that Galvin drove right past the Pasman's "Beware of the Dog" signs and yet claimed that he never noticed them. ("No. Like I said, I haven't seen them, or I don't – I'm not aware of them.") (Galvin Deposition page 15 lines 6-7)(RA 607). The beware of the dog signs was quite visible from the private road in front of Pasman's trailer. (R. Pasman deposition page 74, lines 1-25)(RA 772). The Trial Court expressly found:

The Court finds there were beware of dog signs on Mr. Pasman's property that were visible to the general public. The dog was visible out front chained up from time to time and that the property manager would drive through the trailer park and had an opportunity to observe those things. The Court finds that there was – well, there was nothing presented that Mr. Galvin or Mr. Blackburn ever actually saw a beware of dog sign. (RA 1076)

A landlord is deemed to have knowledge of a dangerous condition when the condition existed for such a period of time as to justify the conclusion that, in the exercise of ordinary care, he should have known of its existence within such time as would have given him a reasonable opportunity to remedy the condition or where the exercise of reasonable care he could have discovered the defective condition and made it safe. Knowledge may be implied from the long-continued existence of the defect. *Boe v. Healy*, 168 N.W.2d 710, 713 (S.D. 1969) (citations omitted).

A reasonable juror may not believe that Galvin drove by the property every day for four or five years and never once noticed the two large commercial “Beware of Dog” signs nailed to the front on Pasman's trailer. *East Winds Court's* defense reminds one of the character Sergeant Schultz's classic line in the television show “Hogan's Heroes”: “I see *nothing!*”

Pasman believed that Galvin knew all about the Pitbull. The dog was “just as big as any German Shepard, husky, big-boned, big muscle, big dog. (R. Pasman Deposition page 10, lines 1-2) (RA 756). The dog was always jumping on people. (R. Pasman Deposition page 10 line 16) (RA 756). Ron Pasman testified that everyone in the whole neighborhood knew that he had this big, well-muscled dog that jumped on everyone. (R. Pasman Deposition page 29) (RA 760). Pasman testified:

Q. So Ron Galvin knew about the dog?

A. Yeah.

Q. Yes?

- A. Everybody knew about it, yeah.  
Q. And Ron Galvin knew you had the beware of the dog signs up?  
A. Yeah, everybody saw them.

(R. Pasman deposition page 60 lines 11-17). (RA 768). Eagleman believed that Galvin knew about the dog. Eagleman testified:

- Q. All right. Do you think that all of the neighbors knew that your grandpa had Marco?  
A. Yeah.  
Q. How would they have known that, Josh?  
A. Because he is outside all of the time.

(Eagleman Deposition page 26, lines 9-13). (RA 913). Eagleman also testified that everyone connected with the trailer park knew about the Pitbull:

- Q. Do you know, was your grandpa allowed to have Marco at the trailer park?  
A. Yeah, he was allowed to.  
Q. Did they—did your grandpa say “Hey, you guys have to hide Marco because he’s not allowed in the trailer park”?  
A. No.  
Q. In your opinion, did pretty much everybody there know that he had Marco?  
A. Yeah. (Eagleman Deposition page 32, lines 1-10)(RA 914)

Anderson believed that *East Winds Court*, Blackburn, and Galvin knew about the dangerous Pitbull. In her *Affidavit*, Anderson stated:

13. Marco would bark at those who passed by.  
14. Marco would attack anyone within his reach.  
15. Marco was one of those dogs that just shouldn’t be there.  
16. I believe that East Winds Court, Inc. was aware of Marco and that Marco was dangerous. (RA 878).

A reasonable landlord, a reasonable property manager for a trailer park, in a four-to-five-year time frame, would have noticed the two “Beware of Dog” signs, learned of the purposes for keeping the dog (which was for protection), and investigated the dog,

discovered its' dangerous, headstrong behavior, talked to the neighbors about it and would have taken decisive action to remove the Pitbull from the trailer park or ordered that the tenant build a fenced-in kennel.

Galvin equivocates:

Q. And in that picture, there are two beware of dog signs posted on his trailer. Have you seen those?

A. I don't remember seeing them, **but I can't say for sure.**

(Galvin deposition page 13, lines 22-25) (RA 605). Thus, Galvin's deposition testimony is equivocal. "I don't remember seeing them, **but I can't say for sure.**" Therefore, the trial court's factual conclusion that Galvin never saw the signs is disputed by Galvin's own testimony. Pasman certainly believed that Galvin *knew* about Pasman's dog and saw the "Beware of Dog" signs. (R. Pasman deposition page 60 lines 15-17)(RA 768).

Furthermore, Anderson, the next-door neighbor, certainly contradicted Galvin's statements. Anderson stated under oath that she believed that Galvin knew about the Pitbull and that it was dangerous. Specifically, Anderson, Pasman's next-door neighbor, swore under oath in her Affidavit that the "Beware of Dog" signs had been up the entire time Pasman had the dog. (Anderson Affidavit at ¶ 10)(RA 878). Anderson starkly stated in her *Affidavit*: "I believe that *East Winds Court, Inc.* was aware of Marco and knew that Marco was dangerous." (Anderson Affidavit at ¶16) (RA 878)<sup>1</sup>. At the very least, genuine issues of material fact exist, making summary judgment inappropriate in this case.

---

<sup>1</sup> Appellee attempts to pooh-pooh Anderson's Affidavit. (Appellee's Brief at 16). First, it takes courage to offer an Affidavit against your own landlord. Second, the use of an Affidavit opposing summary judgement is expressly authorized by the South Dakota Rules of Civil Procedure. (See, S.D.C.L. §15-6-56(c)).



### **ISSUE III**

#### **THERE ARE GENUINE ISSUES OF MATERIAL FACT CONCERNING THE LANDLORD’S NEGLIGENCE IN THE COMMON AREA.**

Appellee never once in its’ entire brief directly mentioned the basketball hoop on common property directly in front of the Pitbull. Appellee completely and utterly failed to respond to this argument in their brief. The reason Appellee was unable to respond to this argument is because it is fatal to Appellee’s case.

As a rule, the “possessor of land owes an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety and is liable for the breach of such duty.” *Norris v. Chicago, M., St. P. & P.R. Co.*, 74 S.D. 271, 273, 51 N.W.2d 792, 793 (1952). Landlords have a duty to maintain the safe physical condition of the common areas within their control. *Walther v. KPKA Meadowlands Ltd. Partnership*, 581 N.W.2d 527, 535 (SD 1998). Appellee admits this. (Appellee Brief at page 12). Where a landlord reserves control over a portion of the premises, a failure to carefully maintain that area creates tort liability. *Boe v. Healy*, 84 S.D. 155, 168 N.W. 2d 710 (1969).

*East Winds Court* had authorized a basketball hoop/basketball court on its’ private street in the trailer park directly in front of Pasman’s leased concrete slab. The basketball hoop was in the common area in front of Pasman’s trailer. Galvin admits that it was his job to maintain the common area of the property. (Galvin deposition page 10 lines 1-5) (RA 602). *East Winds Court* response to Plaintiff’s Second Set of Admissions No. 3 is telling:

3.Admit or deny that Meadow View Road was exclusively under the ownership, maintenance, dominion and control of East Winds Court, Inc. at the time of the occurrence.

Response: Admit.

(*East Winds Court, Inc.*, Responses to Plaintiff's Request for Admissions (Second Set). (RA 884).

Joshua Eagleman testified that he and Kaleb played basketball in the common area (East Winds private street) right in front of the Pitbull.

Q. Because you were playing basketball in the street; is that right?

A. Yeah.

\* \* \* \* \*

Q. Okay. And if I understand correctly what happened, a ball bounced up into the yard –

A. Yeah.

Q. -- as you guys were playing basketball, and Kaleb went to get the basketball. Is that true?

A. Yeah.

(Eagleman Deposition page 18, lines 2-4, and 13-18)( RA 911). Furthermore, Eagleman testified:

Q. Okay. And you guys kind of played basketball out in the street; is that right?

A. Yeah.

Q. Okay. And that was kind of routine thing that to have done. You know, the boys kind of stay out there and play basketball on the street?

A. Oh, yeah.

Q. And sometimes the basketball would bounce into the yard , wouldn't it?

A. Sometimes.

(Eagleman Deposition page 11, lines 21-25 and page 12, lines 1-5)(RA 909).

Furthermore, the basketball court was definitely in the trailer park's street.

Plaintiffs issued a Request for Admission as to the specific location of the basketball

hoop. That Request for Admission as well as East Winds Courts response are as follows:

11. Admit or Deny that the basketball hoop as depicted in the picture below is located on Meadow View Road.

---



**RESPONSE:** Deny. The basketball hoop in the photograph appears to be located in the grass lot of a trailer court near Meadow View Road.

(*East Winds Court, Inc.*, Responses to Plaintiff's Request for Admissions (Second Set)(RA 886). Again, there is and can be no question that the *basketball court* was on common property (even if there is a question of fact as to the hoop).

Here, it is both foreseeable and preventable that having a basketball court on common property directly in front of a large, barking Pitbull with two large commercial "Beware of Dog" signs would foreseeably cause a ball to bounce onto Pasman's property between the basketball hoop and a dangerous pitbull sitting right there would bite. *East Winds Court* violated its' duty to maintain the common area. A child playing basketball in a common area and retrieving a ball is entirely foreseeable. At the very least, a genuine issue of material fact exists, making summary judgment inappropriate in this case. (See, *Rowland v. Log Cabin, Inc.*, 658 N.W.2d 20 (S.D. 2003).

#### **ISSUE IV**

#### **THE PITBULL'S ATTACK WAS FORESEEABLE BASED UPON THE TOTALITY OF THE CIRCUMSTANCES.**

Defendant cites *Dougherty v. Hibbits* as authority for the proposition that the “Beware of Dog” signs do not matter. (Appellee’s Brief at page 17). First, it should be noted that the case is a Delaware trial court opinion. Therefore, it has very limited precedential value. Second, the facts are totally different than is present here. In *Dougherty*, the landlord rented a house in Delaware to a tenant. The landlord actually lived in Arizona. The landlord had never ever seen the dog before. The landlord was never even in the same state as the dog before. That is a far cry from the facts herein. Here, Galvin was an “on-site” property manager. His job was to manage the property. It was not his job to just look the other way. Yet, thousands of times over the course of four to five years, he did just that. In other words, Burgi believes that the two large commercial “Beware of Dog” signs affixed to the front of the Pasman’s trailer should be considered, as they must, under the totality of the circumstances.

Appellee further criticizes reliance upon *Rowland v. Log Cabin, Inc.*, 658 N.W.2d 76 (S.D. 2003). In *Rowland*, following the totality of the circumstances test to determine foreseeability, this Court held that whether a reasonable person would have realized that a large Akita dog in a small bar with drunken patrons involved an unreasonable risk of harm is a question of fact for the jury. Where an injury is foreseeable, a duty may exist where not otherwise recognized. *McGuire v. Curry*, 766 N.W.2d 501 (S.D. 2009).

Here, the trial court focused on the assumed fact that since neither Blackburn nor Galvin admitted that they knew about the Pitbull, the Court granted summary judgment.

In South Dakota, the factors to consider in the case of a dog, that are sufficient to establish that a dog is dangerous, are whether the dog constantly barked, bared its teeth, and strained at its' leash. *Gehrts v. Batteen*, 620 N.W.2<sup>nd</sup> 775 (S.D. 2000).

Here, a reasonable person would have realized that a large dangerous Pitbull, with a lifetime, spent being chained up on a leash, with neighbors that feared it, straining at its' leash to bite the neighbor lady, barking at passersby, with two large "Beware of Dog" signs, when small children are running around the common areas and playing basketball on a basketball court directly in front of this dangerous Pitbull created an unreasonable risk of harm to those kids, and specifically K.R.B. It is also a question of fact for the jury. Id.

## **ISSUE V**

### **THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT.**

The South Dakota Supreme Court has repeatedly stated and specifically reiterated in dog bite cases that questions of negligence, contributory negligence, and assumption of the risk are all for the jury to determine in all but the rarest of cases so long as there is any evidence to support the case. *Rowland v. Log Cabin, Inc.*, 658 N.W.2d 76 (SD 2003). In *Rowland*, the Supreme Court reiterated that the duty to foresee a risk of harm (from a dog) is dependent upon *all the surrounding facts and circumstances* and may require further investigation or inquiry. *Rowland v. Log Cabin, Inc.*, 658 N.W. 2d 76 (SD 2003).

The trial court at the summary judgment hearing improperly placed the burden on the plaintiffs to prove Blackburn and Galvin's subjective knowledge. The burden is not on the party resisting summary judgment to prove subjective knowledge of the adverse

party. The *credibility* of the denials of the alleged lack of knowledge must be determined by the jury and not resolved on a motion for summary judgment. *Continental Grain Co. v. Heritage Bank*, 548 N.W2d 507 (S.D. 1996). Again, summary judgment requires not only that there be no genuine issue of material fact but also that there be no genuine issues of *inferences* to be drawn from those facts. *St. Onge Livestock Co., Ltd. v. Curtis*, 650 N.W.2d 537 (S.D. 2002).

All the above demonstrates that abundant genuine issues of material fact exist in this case. The factual determination by the trial court that neither Blackburn nor Galvin knew about the dog is contrary to sworn deposition testimony, sworn affidavit testimony, and at best is supported by equivocal and varied statements by Blackburn and Galvin. At the very least, genuine issues of material fact exist in this case based upon the totality of the circumstances. This is not a case that can be decided on a motion for summary judgment. S.D.C.L. 15-6-56(a). Summary judgment is not a substitute for trial.

### **CONCLUSION**

Based on the arguments above and the authorities cited, Burgi respectfully requests this Court reverse the trial court's *Order* granting Summary Judgment and remand the matter back to the First Circuit for a trial on the merits.

Dated this \_\_\_\_\_ day of July, 2021.

**KING LAW FIRM, P.C.**

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*Attorney for Appellants*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that two true and correct copies of the foregoing **Appellant's Brief** were served by electronic mail upon the attorney for the defendant, Mark J. Arndt of Evans, Haigh & Hinton, LLP, located at 101 N. Main Ave, Ste 213, P.O. Box 2790, Sioux Falls, SD 57101-2790. The undersigned hereby also certifies that three copies of this **Appellant's Brief** were served by first-class United States mail, postage prepaid, upon the Clerk of the Supreme Court, 500 East Capitol, Pierre, South Dakota 57501-5070, all on this \_\_\_\_\_ day of July, 2021.

---

David J. King

**CERTIFICATE OF COMPLIANCE**

In accordance with S.D.C.L. § 15-26A-66(b)(4), I hereby certify that this brief complies with the requirements outlined in South Dakota Codified Laws. This brief was prepared using Word and contains 21,497 characters and 4,400 words. I relied on the word and character count of a word-processing program to prepare this certificate.

Dated this \_\_\_\_\_ day of July, 2021

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David J. King

# Name Search Results

Search  Search Results

Search Criteria: boyles, jeffrey

BOYLES, JEFFERY ALLEN      02/02/1983

Address: 425 N INDIANA AVE  
SIOUX FALLS, SD 57103

Gender: Male  
Race: White

[Additional Criminal Information](#)  
**Cases (8)**

Show  entries

Search:

Case Number	Style	Status
File Date	County Name	



Case Number	Style	Status
File Date	County Name	
<a href="#">49CRI19-001419</a>		
STATE OF SOUTH DAKOTA vs. JEFFREY ALLEN BOYLES		
Terminated		
02/26/2019		
Minnehaha		
<a href="#">49SMC18-004068</a>		
DOLLAR LOAN CENTER SOUTH DAKOTA LLC vs. JEFFREY BOYLES		
Terminated		
06/21/2018		
Minnehaha		
<a href="#">49CRI17-004572</a>		
STATE OF SOUTH DAKOTA vs. JEFFERY ALAN BOYLES		
Terminated		
06/13/2017		
Minnehaha		
<a href="#">49MAG17-002792</a>		
STATE OF SOUTH DAKOTA vs. JEFFREY ALLEN BOYLES		
Terminated		
04/24/2017		
Minnehaha		
<a href="#">49CRI16-003792</a>		
STATE OF SOUTH DAKOTA vs. JEFFREY ALLEN BOYLES		
Terminated		
05/25/2016		
Minnehaha		
<a href="#">41POA13-000430</a>		
STATE OF SOUTH DAKOTA vs. JEFFREY BOYLES		
Terminated		
03/26/2013		
Lincoln		
<a href="#">49C09001836A0</a>		
STATE OF SOUTH DAKOTA VS. BOYLES,JEFFREY,ALLEN		
Terminated		
03/18/2009		
Minnehaha		
<a href="#">49C04003319A0</a>		
STATE OF SOUTH DAKOTA VS. BOYLES,JEFFREY,ALLEN		
Terminated		
07/01/2004		
Minnehaha		

Showing 1 to 8 of 8 entries

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1

Next

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# South Dakota Unified Judicial System eCourts

*Dockets are continuously updated during normal business hours, but cannot make assurances that the latest information on orders or filings available at the Clerk's Office have been recorded on the dockets.*



## CASE LEGEND

STATE OF SOUTH DAKOTA vs. JEFFREY ALLEN BOYLES

49CRI19-001419

Judicial Officer: Zell, Bradley G.

Type: Criminal Circuit

County: Minnehaha

Date Filed: 2/26/2019

Status: Terminated

## PARTY INFORMATION

### Plaintiff

STATE OF SOUTH DAKOTA

Address:

### Attorney(s)

EHLERS, LORI  
FOLKENS, MELINDA  
JAMES, CAROLE  
MOWERY, MANDI

### Defendant

BOYLES, JEFFREY ALLEN

Address: 425 N INDIANA AVE SIOUX FALLS SD 57103

Date of Birth: 02/02/1983

Gender: Male

Race: White

Height: 5'10"

Weight: 135

Eyes: Brown

### Attorney(s)

DOYLE, BETSY  
Pro Se  
KOISTINEN, JASON R

## DISPOSITION INFORMATION

**1. 22-42-5 (Class 5 Felony) - POSSESSION CONTROLLED SUBSTANCE IN SCHEDULES I OR II [Drug Type: Methamphetamines]**

Offense Date: 02/25/2019

Arrest Date: 02/25/2019

Citation: NONUM - Citation Date: 02/25/2019

Plea Date: 03/21/2019 - No Plea Entered

Disposition Date: 03/21/2019 - Recharged-by Indictment

**2. 22-42-6 (Class 1 Misdemeanor) - POSS TWO OUNCES OF MARIJUANA OR LESS**

Offense Date: 02/25/2019

Arrest Date:

Citation: NONUM - Citation Date: 02/25/2019

Plea Date: 03/21/2019 - No Plea Entered

Disposition Date: 03/21/2019 - Recharged-by Indictment

**3. 22-11-6 (Class 1 Misdemeanor) - OBSTRUCT POLICE, JAILER OR FIREFIGHTER**

Offense Date: 02/25/2019

Arrest Date:

Citation: NONUM - Citation Date: 02/25/2019

Plea Date: 03/21/2019 - No Plea Entered

Disposition Date: 03/21/2019 - Recharged-by Indictment

**4. 22-42A-3 (Class 2 Misdemeanor) - USE OR POSSESSION OF DRUG PARAPHERNALIA**

Offense Date: 02/25/2019

Arrest Date:

Citation: NONUM - Citation Date: 02/25/2019

Plea Date: 03/21/2019 - No Plea Entered  
Disposition Date: 03/21/2019 - Recharged-by Indictment

**5. 22-42-5 (Class 5 Felony) - POSSESSION CONTROLLED SUBSTANCE IN SCHEDULES I OR II [Drug Type: Methamphetamines]** Offense Date: 02/25/2019  
Arrest Date:

Plea Date: 04/03/2019 - Not Guilty  
Disposition Date: 07/25/2019 - Dismissed-Motion by Prosecutor

**6. 22-11-6 (Class 1 Misdemeanor) - OBSTRUCT POLICE,JAILER OR FIREFIGHTER** Offense Date: 02/25/2019  
Arrest Date:

Plea Date: 04/03/2019 - Not Guilty  
Disposition Date: 07/25/2019 - Dismissed-Motion by Prosecutor

**7. 22-42-6 (Class 1 Misdemeanor) - POSS TWO OUNCES OF MARIJUANA OR LESS** Offense Date: 02/25/2019  
Arrest Date:

Plea Date: 04/03/2019 - Not Guilty  
Disposition Date: 07/25/2019 - Dismissed-Motion by Prosecutor

**8. 22-42A-3 (Class 2 Misdemeanor) - USE OR POSSESSION OF DRUG PARAPHERNALIA** Offense Date: 02/25/2019  
Arrest Date:

Plea Date: 04/03/2019 - Not Guilty  
Disposition Date: 07/25/2019 - Dismissed-Motion by Prosecutor

**9. 22-7-7 (No Degree) - HABITUAL OFFENDER-1 OR 2 PRIOR FELONIES** Offense Date: 02/25/2019  
Arrest Date:

Plea Date: 04/03/2019 - Deny  
Disposition Date: 07/25/2019 - Dismissed-Motion by Prosecutor

**10. 22-11-12 (Class 1 Misdemeanor) - MISPRISION OF FELONY** Offense Date: 02/25/2019  
Arrest Date:

Plea Date: 07/25/2019 - Nolo Contendere  
Disposition Date: 07/25/2019 - Stipulate to Facts-Found Guilty  
Sentence Date: 07/25/2019 -

Incarcerated to Jail for 90 Day(s) with 90 Day(s) suspended and credit for 0 Day(s) served.

Fee Totals

Court Costs Class I Misdemeanor + State Fine	\$236.50
Court Appointed Attorney Fee	\$300.00

Condition(s)

1 NO DRUG RELATED OFFENSES  
, Effective: 07/25/2019 - 07/25/2021  
Comment: ALL OF SAID JAIL IS SUSPENDED

**EVENT INFORMATION**

Date	Type	Comment
02/26/2019	COMPLAINT	
02/26/2019	SCHEDULING ORDER	
02/26/2019	PERSONAL RECOGNIZANCE AND APPEARANCE BOND (2-PAGE)	
02/26/2019	BOND FINDINGS AND CONDITIONS OF RELEASE	
02/27/2019	APPLICATION FOR COURT APPOINTED LAWYER AND ORDER	PDO
03/21/2019	INDICTMENT	
03/21/2019	PART II INFORMATION	FOR HABITUAL CRIMINAL (SDCL 22-7-7)
04/03/2019	SCHEDULING ORDER	
04/03/2019	SCHEDULING ORDER	
06/06/2019	MOTION FOR DELAY AND ORDER	
07/10/2019	SCHEDULING ORDER	HALF SLIP
07/10/2019	ORDER FOR REMAND	
07/25/2019	AMENDED COMPLAINT	
07/25/2019	INFORMATION	
07/25/2019	PETITION TO GIVE UP RIGHTS AND PLEAD GUILTY	
07/29/2019	JUDGMENT OF CONVICTION	
01/07/2020	UNDELIVERABLE COLLECTIONS LETTER	15 DAY
03/07/2020	COLLECTIONS 1ST WARNING - 15 DAY	
03/23/2020	UNDELIVERABLE COLLECTIONS LETTER	15 DAY
04/11/2020	COLLECTIONS 2ND WARNING - 45 DAY	
04/21/2020	UNDELIVERABLE COLLECTIONS LETTER	45 DAY
05/02/2020	SENT TO COLLECTION AGENCY - 60 DAYS	

**BOND INFORMATION****Settings**

02/26/2019

Type: PERSONAL RECOGNIZANCE Amount:

Conditions:

- GOOD BEHAVIOR
- NO DRUGS WITHOUT A VALID PRESCRIPTION
- STAY IN CONTACT WITH YOUR ATTORNEY
- MAKE ALL COURT APPEARANCES

**Surety and Other Bonds**

Personal Recognizance Bond Posted on 02/26/2019 Status \$0.00 PERSONAL RECOGNIZANCE 02/26/2019

**HEARING INFORMATION**

Hearing Type	Hearing Date/Time	Judge	Result	Cancel Reason
Jury Trial	07/29/2019 8:30 AM	Zell, Bradley G.	Cancelled	Other
Change of Plea/Arraignment/Sentencing	07/25/2019 3:00 PM	Pokela, Sara	Held/Combo	
Preliminary Hearing	04/12/2019 9:00 AM	Johnson, Eric	Cancelled	Recharge by Indictment

**HEARING INFORMATION**

<i>Hearing Type</i>	<i>Hearing Date/Time</i>	<i>Judge</i>	<i>Result</i>	<i>Cancel Reason</i>
Initial/Arraignment	04/03/2019 9:00 AM	Zell, Bradley G.	Held/Combo	
Initial Appearance	02/26/2019 1:30 PM	Pokela, Sara	Held	

**FINANCIAL INFORMATION****BOYLES, JEFFERY ALLEN**

Total Financial Assessment	\$536.50
Total Payments and Credits	\$536.50
Balance Due as of 7/27/2021	\$0.00

**Fee Categories**

Court Appointed Attorney Fees	\$300.00
Court Automation Surcharge	\$41.50
Fines and Penalties - State, County or City	\$150.00
Liquidated Costs	\$40.00
Victim's Compensation	\$5.00

**Transactions**

07/25/2019	Transaction Assessment			\$536.50
07/26/2019	Jail Time Served			(\$60.00)
09/20/2019	Payment	Receipt # 49-396617	BOYLES, JEFFERY ALLEN	(\$150.00)
10/08/2019	Payment	Receipt # 49-399412	BOYLES, JEFFERY ALLEN	(\$50.00)
10/25/2019	Payment	Receipt # 49-402396	BOYLES, JEFFERY ALLEN	(\$40.00)
11/19/2019	Payment	Receipt # 49-406582	BOYLES, JEFFERY ALLEN	(\$40.00)
01/03/2020	Payment	Receipt # 49-413437	BOYLES, JEFFERY ALLEN	(\$25.00)
01/31/2020	Payment	Receipt # 49-417513	BOYLES, JEFFERY ALLEN	(\$30.00)
09/04/2020	Payment	Receipt # 49-446890	CGI COLLECTION AGENCY / BOYLES	(\$141.50)



## South Dakota Unified Judicial System eCourts

*Dockets are continuously updated during normal business hours, but cannot make assurances that the latest information on orders or filings available at the Clerk's Office have been recorded on the dockets.*



### CASE LEGEND

DOLLAR LOAN CENTER SOUTH DAKOTA LLC vs. JEFFREY BOYLES

49SMC18-004068

Judicial Officer: Gries, Angie

Type: Small Claims - \$1000.01-\$3999.99

County: Minnehaha

Date Filed: 6/21/2018

Status: Terminated

### PARTY INFORMATION

#### Plaintiff

DOLLAR LOAN CENTER SOUTH DAKOTA LLC

Address: 8860 W SUNSET RD STE 100 LAS VEGAS NV 89148

#### Attorney(s)

Pro Se

#### Defendant

BOYLES, JEFFREY

Address: 425 N INDIANA AVE SIOUX FALLS SD 57103

Date of Birth: 02/02/1983

Gender: Male

Race: White

Height: 5'10"

Weight: 135

Eyes: Brown

#### Attorney(s)

Pro Se

### JUDGMENT INFORMATION

10/05/2018 - Dismissed

### EVENT INFORMATION

Date	Type	Comment
06/21/2018	CERTIFIED MAIL RECEIPT-SMC	
06/21/2018	CERTIFIED MAIL RETURN	
06/21/2018	NOTICE OF SMALL CLAIMS	
06/21/2018	PLAINTIFF'S STATEMENT OF SMALL CLAIMS	WITH SUPPORTING DOCUMENTS
06/21/2018	AFFIDAVIT OF NON-MILITARY STATUS	
06/22/2018	CERTIFIED MAIL RECEIPT-SMC	MAILING DATE 6/25 JEFFREY
07/09/2018	RETURN OF REGISTERED MAIL	JEFFREY
07/09/2018	FREE FORM TEXT	EMAILED DLC RE NO SERVICE REQ INSTRUCTIONS
07/09/2018	ADDITIONAL SERVICE ATTEMPT AUTHORIZED	PLT TOOK
08/16/2018	ADDITIONAL SERVICE ATTEMPT AUTHORIZED	PLT TOOK-- NEED ORIGINAL
10/05/2018	DEFENDANT DISMISSED BY PLAINTIFF	

**HEARING INFORMATION**

<i>Hearing Type</i>	<i>Hearing Date/Time</i>	<i>Judge</i>	<i>Result</i>	<i>Cancel Reason</i>
Default Hearing	10/10/2018 8:30 AM	Pokela, Sara	Cancelled	Dismissed
Default Hearing	08/22/2018 8:30 AM	Johnson, Eric	Cancelled	Other

**FINANCIAL INFORMATION****DOLLAR LOAN CENTER OF SOUTH DAKOTA LLC**

Total Financial Assessment	\$35.20
Total Payments and Credits	\$35.20
Balance Due as of 7/27/2021	\$0.00

**Fee Categories**

Civil Filing Fees and Fees	\$22.00
Court Automation Surcharge	\$6.00
Shipping Postage Cost	\$7.20

**Transactions**

06/21/2018	Transaction Assessment			\$35.20
06/21/2018	Payment	Receipt # 49-326697	DOLLAR LOAN CENTER SOUTH DAKOTA LLC	(\$35.20)





# South Dakota Unified Judicial System eCourts

Dockets are continuously updated during normal business hours, but cannot make assurances that the latest information on orders or filings available at the Clerk's Office have been recorded on the dockets.



## CASE LEGEND

STATE OF SOUTH DAKOTA vs. JEFFERY ALAN BOYLES

49CRI17-004572

Judicial Officer: Johnson, Eric

Type: Criminal Circuit

County: Minnehaha

Date Filed: 6/13/2017

Status: Terminated

## PARTY INFORMATION

### Plaintiff

STATE OF SOUTH DAKOTA

Address:

### Attorney(s)

KLENTZ, SETH

MOWERY, MANDI

### Defendant

BOYLES, JEFFERY ALAN

Address: 425 N INDIANA AVE SIOUX FALLS SD 57103

Date of Birth: 02/02/1983

Gender: Male

Race: White

Height: 5'10"

Weight: 135

Eyes: Brown

### Attorney(s)

Pro Se

## DISPOSITION INFORMATION

### 1. 22-42-6 (Class 1 Misdemeanor) - POSS TWO OUNCES OF MARIJUANA OR LESS

Offense Date: 05/31/2017

Arrest Date: 05/31/2017

Citation: NONUM - Citation Date: 05/31/2017

Plea Date: 06/16/2017 - Guilty

Disposition Date: 06/16/2017 - Judgment on Plea of Guilty

Sentence Date: 06/16/2017 -

Incarcerated to Jail for 90 Day(s) with 90 Day(s) suspended and credit for 0 Day(s) served.

#### Fee Totals

Court Costs Class I Misdemeanor + State Fine \$200.00

#### Condition(s)

1 NO LIKE OFFENSES., Effective: 06/16/2017 - 06/16/2019

2 NO DRUG OR MARIJUANA RELATED OFFENSES., Effective: 06/16/2017 - 06/16/2019

Comment: ALL OF SAID JAIL TIME IS SUSPENDED

### 2. 22-42A-3 (Class 2 Misdemeanor) - USE OR POSSESSION OF DRUG PARAPHERNALIA

Offense Date: 05/31/2017

Arrest Date:

Citation: NONUM - Citation Date: 05/31/2017

Plea Date: 06/16/2017 - No Plea Entered

Disposition Date: 06/16/2017 - Dismissed-Motion by Prosecutor

### 3. 32-12-22 (Class 2 Misdemeanor) - NO DRIVERS LICENSE

Offense Date: 05/31/2017

Arrest Date:

Citation: 0001283300 - Citation Date: 05/31/2017

Plea Date: 06/16/2017 - No Plea Entered

Disposition Date: 06/16/2017 - Dismissed-Motion by Prosecutor

#### EVENT INFORMATION

Date	Type	Comment
06/13/2017	COMPLAINT	ATTACHED TICKET
06/13/2017	INFORMATION	
06/15/2017	BENCH WARRANT CANCELLED	
06/20/2017	JUDGMENT OF CONVICTION	

#### WARRANT INFORMATION

Bench Warrant - Failure to Appear issued on 06/14/2017 Status: Canceled Status Date: 06/15/2017

#### BOND INFORMATION

##### Settings

06/14/2017

Warrant #49CRI17-004572 - 1

Type: CASH OR SURETY Amount: \$500.00

#### HEARING INFORMATION

Hearing Type	Hearing Date/Time	Judge	Result	Cancel Reason
Initial/Arrestment	06/16/2017 9:00 AM	Johnson, Eric	Held/Combo	
Initial/Arrestment	06/14/2017 9:00 AM	Johnson, Eric	Failure to Appear	

#### FINANCIAL INFORMATION

##### BOYLES, JEFFERY ALLEN

Total Financial Assessment	\$200.00
Total Payments and Credits	\$200.00
Balance Due as of 7/27/2021	\$0.00

#### Fee Categories

Court Automation Surcharge	\$41.50
Fines and Penalties - State, County or City	\$116.00
Liquidated Costs	\$40.00
Victim's Compensation	\$2.50

#### Transactions

06/16/2017	Transaction Assessment			\$200.00
07/28/2017	Payment	Receipt # 49-273754	BOYLES, JEFFERY ALAN	(\$60.00)
08/11/2017	Payment	Receipt # 49-276264	BOYLES, JEFFERY ALAN	(\$30.00)
08/25/2017	Payment	Receipt # 49-278739	BOYLES, JEFFERY ALAN	(\$30.00)
09/08/2017	Payment	Receipt # 49-281159	BOYLES, JEFFERY ALAN	(\$30.00)
09/22/2017	Payment	Receipt # 49-283969	BOYLES, JEFFERY ALAN	(\$25.00)
09/22/2017	Payment	Receipt # 49-283971	BOYLES, JEFFERY ALAN	(\$5.00)
10/06/2017	Payment	Receipt # 49-286479	BOYLES, JEFFERY ALAN	(\$20.00)



# South Dakota Unified Judicial System eCourts

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## CASE LEGEND

STATE OF SOUTH DAKOTA vs. JEFFREY ALLEN BOYLES 49MAG17-002792  
Judicial Officer:  
Type: Criminal Magistrate  
County: Minnehaha  
Date Filed: 4/24/2017  
Status: Terminated

## PARTY INFORMATION

**Plaintiff** Attorney(s)  
STATE OF SOUTH DAKOTA  
Address:

**Defendant** Attorney(s)  
BOYLES, JEFFREY ALLEN  
Address: 425 N INDIANA AVE SIOUX FALLS SD 57103  
Date of Birth: 02/02/1983  
Gender: Male  
Race: White  
Height: 5'10"  
Weight: 135  
Eyes: Brown

## DISPOSITION INFORMATION

**1. 32-35-113 (Class 2 Misdemeanor) - FAIL TO MAINTAIN FINANCIAL RESPONSIBILITY** Offense Date: 04/24/2017  
Arrest Date: 04/24/2017

Citation: 0001261955 - Citation Date: 04/24/2017  
Plea Date: 05/05/2017 - No Plea Entered  
Disposition Date: 05/05/2017 - Dismissed-Motion by Court (including For No Probable Cause)

**2. 32-12-22 (Class 2 Misdemeanor) - NO DRIVERS LICENSE** Offense Date: 04/24/2017  
Arrest Date:

Citation: 0001261955 - Citation Date: 04/24/2017  
Plea Date: 05/12/2017 - Guilty by POA  
Disposition Date: 05/12/2017 - Judgment on Plea of Guilty  
Sentence Date: 05/12/2017 -

## EVENT INFORMATION

Date	Type	Comment
04/27/2017	TICKET	
05/05/2017	PROOF OF INSURANCE	

**HEARING INFORMATION**

<i>Hearing Type</i>	<i>Hearing Date/Time</i>	<i>Judge</i>	<i>Result</i>	<i>Cancel Reason</i>
Initial Appearance	05/18/2017 9:00 AM	Johnson, Eric	Cancelled	Dismissed

**FINANCIAL INFORMATION****BOYLES, JEFFERY ALLEN**

Total Financial Assessment	\$120.00
Total Payments and Credits	\$120.00
Balance Due as of 7/27/2021	\$0.00

**Fee Categories**

Court Automation Surcharge	\$23.50
Fines and Penalties - State, County or City	\$54.00
Liquidated Costs	\$40.00
Victim's Compensation	\$2.50

**Transactions**

05/12/2017	Transaction Assessment			\$120.00
05/12/2017	Payment	Receipt # 49-260668	BOYLES, JEFFREY ALLEN	(\$120.00)



# South Dakota Unified Judicial System eCourts

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## CASE LEGEND

STATE OF SOUTH DAKOTA vs. JEFFREY ALLEN BOYLES

49CRI16-003792

Judicial Officer: Schlimgen, John

Type: Criminal Circuit

County: Minnehaha

Date Filed: 5/25/2016

Status: Terminated

## PARTY INFORMATION

### Plaintiff

STATE OF SOUTH DAKOTA

Address:

### Attorney(s)

KLENTZ, SETH

BYE, RHETT

### Defendant

BOYLES, JEFFREY ALLEN

Address: 425 N INDIANA AVE SIOUX FALLS SD 57103

Date of Birth: 02/02/1983

Gender: Male

Race: White

Height: 5'10"

Weight: 135

Eyes: Brown

### Attorney(s)

Pro Se

KOISTINEN, JASON R

## DISPOSITION INFORMATION

### 1. 32-23-2 (Class 1 Misdemeanor) - DRIVING UNDER INFLUENCE-1ST OF

Offense Date: 05/21/2016

Arrest Date: 05/21/2016

Citation: 0001237704 - Citation Date: 05/21/2016

[A] Plea Date: 07/07/2016 - Guilty

Disposition Date: 07/07/2016 - Judgment on Plea of Guilty

Sentence Date: 07/07/2016 -

License: Revoked DL for 30 Day(s). Court Possession: 07/07/2016 Work Permit: Y

Incarcerated to Jail for 120 Day(s) with 120 Day(s) suspended and credit for 0 Day(s) served.

#### Fee Totals

Court Costs Class I Misdemeanor + State Fine \$334.00

DUI Cost \$50.00

#### Condition(s)

1 OBEY ALL LAWS

, Effective: 07/07/2016 - 07/02/2017

2 PAY FINE AND COSTS BY

, Effective: 07/07/2016 - 10/01/2016

3 NO VIOLATIONS OF WORK/ SCHOOL/ OTHER RESTRICTED DRIVER PERMIT

, Effective: 07/07/2016 -

Comment:

### 4. 32-35-113 (Class 2 Misdemeanor) - FAIL TO MAINTAIN FINANCIAL RESPONSIBILITY

Offense Date: 05/21/2016

Arrest Date:

Citation: 0001237704 - Citation Date: 05/21/2016

Plea Date: 06/01/2016 - Not Guilty

Disposition Date: 07/07/2016 - Dismissed-Motion by Prosecutor

**2. 22-42-6 (Class 1 Misdemeanor) - POSS TWO OUNCES OF MARIJUANA OR LESS**

Offense Date: 05/21/2016

Arrest Date:

Citation: NONUM - Citation Date: 05/21/2016

[A] Plea Date: 07/07/2016 - Guilty

Disposition Date: 07/07/2016 - Judgment on Plea of Guilty

Sentence Date: 07/07/2016 -

Incarcerated to Jail for 45 Day(s) with 45 Day(s) suspended and credit for 0 Day(s) served.

**Fee Totals**

Court Costs Class I Misdemeanor + State Fine \$100.00

**Condition(s)**

- 1 NO SIMILAR OFFENSES  
Effective: 07/07/2016 - 07/07/2017
- 2 PAY FINE AND COSTS BY  
Effective: 07/07/2016 - 10/01/2016

Comment:

**3. 22-42A-3 (Class 2 Misdemeanor) - USE OR POSSESSION OF DRUG PARAPHERNALIA**

Offense Date: 05/21/2016

Arrest Date:

Citation: NONUM - Citation Date: 05/21/2016

Plea Date: 06/01/2016 - Not Guilty

Disposition Date: 07/07/2016 - Dismissed-Motion by Prosecutor

**EVENT INFORMATION**

Date	Type	Comment
05/23/2016	BAIL BOND	a-1 bail bond
05/25/2016	INFORMATION	
05/25/2016	COMPLAINT	ATTACHED TICKET
06/01/2016	SCHEDULING ORDER	
06/02/2016	APPLICATION FOR COURT APPOINTED LAWYER AND ORDER	PDO
07/07/2016	PROOF OF INSURANCE	
07/07/2016	ORDER FOR RESTRICTED DRIVER'S PERMIT	
07/07/2016	PETITION TO GIVE UP RIGHTS AND PLEAD GUILTY	
07/14/2016	JUDGMENT OF CONVICTION	

**BOND INFORMATION**

**Surety and Other Bonds**

Bondsman Bond Posted on 05/21/2016

Status \$450.00 INACTIVE 07/07/2016

**HEARING INFORMATION**

Hearing Type	Hearing Date/Time	Judge	Result	Cancel Reason
Jury Trial	07/20/2016 8:30 AM	Schlimgen, John	Cancelled	Other
Change of Plea/Sentencing	07/07/2016 9:00 AM	Schlimgen, John	Held/Combo	

**HEARING INFORMATION**

Hearing Type	Hearing Date/Time	Judge	Result	Cancel Reason
Initial/Arraignment	06/01/2016 9:00 AM	Schlimgen, John	Held/Combo	

**FINANCIAL INFORMATION****BOYLES, JEFFERY ALLEN**

Total Financial Assessment	\$559.00
Total Payments and Credits	\$559.00
Balance Due as of 7/27/2021	\$0.00

**Fee Categories**

Court Automation Surcharge	\$83.00
Court Costs	\$125.00
Fines and Penalties - State, County or City	\$266.00
Liquidated Costs	\$80.00
Victim's Compensation	\$5.00

**Transactions**

07/07/2016	Transaction Assessment			\$559.00
07/08/2016	Jail Time Served			(\$60.00)
09/23/2016	Payment	Receipt # 49-224254	BOYLES, JEFFREY ALLEN	(\$160.00)
10/07/2016	Payment	Receipt # 49-226820	BOYLES, JEFFREY ALLEN	(\$40.00)
10/21/2016	Payment	Receipt # 49-229072	BOYLES, JEFFREY ALLEN	(\$65.00)
11/04/2016	Payment	Receipt # 49-231343	BOYLES, JEFFREY ALLEN	(\$40.00)
11/18/2016	Payment	Receipt # 49-233360	BOYLES, JEFFREY ALLEN	(\$30.00)
12/02/2016	Payment	Receipt # 49-235273	BOYLES, JEFFREY ALLEN	(\$35.00)
12/16/2016	Payment	Receipt # 49-237367	BOYLES, JEFFREY ALLEN	(\$30.00)
12/30/2016	Payment	Receipt # 49-239146	BOYLES, JEFFREY ALLEN	(\$30.00)
01/13/2017	Payment	Receipt # 49-241316	BOYLES, JEFFREY ALLEN	(\$30.00)
01/27/2017	Payment	Receipt # 49-243562	BOYLES, JEFFREY ALLEN	(\$39.00)





# South Dakota Unified Judicial System eCourts

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## CASE LEGEND

STATE OF SOUTH DAKOTA vs. JEFFREY BOYLES

41POA13-000430

Judicial Officer: Torgerson, Kristie

Type: POA Citation

County: Lincoln

Date Filed: 3/26/2013

Status: Terminated

## PARTY INFORMATION

### Plaintiff

STATE OF SOUTH DAKOTA

Address:

### Attorney(s)

### Defendant

BOYLES, JEFFREY

Address: 425 N INDIANA AVE SIOUX FALLS SD 57103

Date of Birth: 02/02/1983

Gender: Male

Race: White

Height: 5'10"

Weight: 135

Eyes: Brown

### Attorney(s)

## DISPOSITION INFORMATION

### 1. 32-25-7 (Class 2 Misdemeanor) - SPEEDING ON OTHER ROADWAYS

Offense Date: 03/08/2013

Arrest Date:

Citation: w13985 - Citation Date: 03/08/2013

Plea Date: 04/12/2013 - Guilty by POA

Disposition Date: 04/12/2013 - Judgment on Plea of Guilty

Sentence Date: 04/12/2013 -

## EVENT INFORMATION

Date	Type	Comment
03/26/2013	TICKET	
04/12/2013	INITIAL APPEARANCE WAIVED	

## FINANCIAL INFORMATION

### BOYLES, JEFFERY ALLEN

Total Financial Assessment \$105.00

Total Payments and Credits \$105.00

Balance Due as of 7/27/2021 \$0.00

## Fee Categories

Court Automation Surcharge \$23.50



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**Fee Categories**

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Fines and Penalties - State, County or City	\$39.00
Liquidated Costs	\$40.00
Victim's Compensation	\$2.50

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**Transactions**

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03/26/2013	Transaction Assessment			\$105.00
04/12/2013	Payment	Receipt # 41-03929	BOYLES, JEFFREY	(\$105.00)



# South Dakota Unified Judicial System eCourts

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## CASE LEGEND

STATE OF SOUTH DAKOTA VS. BOYLES,JEFFREY,ALLEN

49C09001836A0

Judicial Officer: Sage, Doyle

Type: Criminal Circuit

County: Minnehaha

Date Filed: 3/18/2009

Status: Terminated

## PARTY INFORMATION

### Plaintiff

STATE OF SOUTH DAKOTA

Address:

### Attorney(s)

EDEN, AMANDA

### Defendant

BOYLES, JEFFREY ALLEN

Address: 425 N INDIANA AVE SIOUX FALLS SD 57103

Date of Birth: 02/02/1983

Gender: Male

Race: White

Height: 5'10"

Weight: 135

Eyes: Brown

### Attorney(s)

THOMAS, MICHELLE

### Restitution Victim

YYANDERSON, ROBIN

Address: 2913 E SIOUX ST SIOUX FALLS SD 57103-2425

### Attorney(s)

YYSTATE FARM INSURANCE

Address: PO BOX 2371 BLOOMINGTON IL 61702

## DISPOSITION INFORMATION

### 1. 32-34-6 (Class 1 Misdemeanor) - FAIL TO STOP - ACCIDENT CAUSING PROPERTY DAMAGE

Offense Date: 01/27/2010

Arrest Date: 01/27/2010

Citation: NONUM - Citation Date: 01/27/2010

Plea Date: 03/31/2010 - No Plea Entered

Disposition Date: 03/31/2010 - Recharged by Complaint

### 2. 32-35-113 (Class 2 Misdemeanor) - FAIL TO MAINTAIN FINANCIAL RESPONSIBILITY

Offense Date: 01/27/2010

Arrest Date: 01/27/2010

Citation: NONUM - Citation Date: 01/27/2010

Plea Date: 03/31/2010 - No Plea Entered

Disposition Date: 03/31/2010 - Dismissed-Motion by Prosecutor

### 3. 32-34-6 (Class 1 Misdemeanor) - FAIL TO STOP - ACCIDENT CAUSING PROPERTY DAMAGE

Offense Date: 01/27/2010

Arrest Date: 01/27/2010

Citation: NONUM - Citation Date: 01/27/2010

Plea Date: 04/21/2010 - Not Guilty

Disposition Date: 09/15/2010 - Dismissal-Reduction

## DISPOSITION INFORMATION

### 4. 32-24-1 (Class 1 Misdemeanor) - RECKLESS DRIVING

Offense Date: 01/27/2010

Arrest Date: 01/27/2010

Citation: NONUM - Citation Date: 01/27/2010

Plea Date: 09/15/2010 - Guilty

Disposition Date: 09/15/2010 - Judgment on Plea of Guilty

Sentence Date: 09/15/2010 -

Incarcerated to Jail for 30 Day(s) Concurrent with 30 Day(s) suspended and credit for 0 Day(s) served.

Fee Totals

Condition(s)

1 , Effective: 09/15/2010 -

2 , Effective: 09/15/2010 -

## EVENT INFORMATION

Date	Type	Comment
03/18/2009	AFFIDAVIT IN SUPPORT OF APPLICATION FOR ARREST WARRANT	
03/18/2009	COMPLAINT WITH REQUEST FOR ARREST WARRANT THEREON	
03/18/2009	Conversion	ACCT-KEYWORD-1: BOYLES,JEFFREY,ALLEN,
03/18/2009	CASE FILED	
03/18/2009	BI INACTIVE	
03/18/2009	ARREST WARRANT	Schlimgen, John
01/28/2010	BI ACTIVE	
01/28/2010	WARRANT OF ARREST	
01/28/2010	WARRANT OF ARREST AND SERVED RETURN	
01/28/2010	FREE FORM TEXT	SHERIFF'S BOND RECEIPT
02/17/2010	SCHEDULING ORDER	
02/19/2010	APPLICATION FOR COURT APPOINTED COUNSEL	
02/19/2010	ORDER FOR COURT APPOINTED COUNSEL	ORDER FOR COURT APPOINTED COUNSEL PDO
03/31/2010	INDICTMENT	
06/02/2010	FREE FORM TEXT	ORDER FOR TRANSCRIPT/CD - COMPLETED
07/26/2010	MOTION FOR DELAY AND ORDER	
07/30/2010	SUBPOENA	SUBPOENA - ROBIN ANDERSON
07/30/2010	SHERIFF'S RETURN	
08/17/2010	MOTION FOR DELAY AND ORDER	
09/15/2010	INFORMATION	INFORMATION FOR RECKLESS DRIVING
09/15/2010	PETITION TO GIVE UP RIGHTS AND PLEAD GUILTY	
09/15/2010	RECEIPT	
09/15/2010	FREE FORM TEXT	REQUEST TO SET UP RESTITUTION ACCOUNT
09/15/2010	JUDGMENT OF CONVICTION	
09/20/2010	JUDGMENT OF CONVICTION	

**EVENT INFORMATION**

Date	Type	Comment
03/16/2011	REQUEST FOR EXTENSION OF TIME TO PAY FINE/ATTNY FEES/REST	REQUEST FOR EXTENSION OF TIME TO PAY FINE/ATTORNEY FEES/RESTITUTION
03/16/2011	REQUEST FOR EXTENSION OF TIME TO PAY FINE/ATTNY FEES/REST	REQUEST FOR EXTENSION OF TIME TO PAY FINE/ATTORNEY FEES/RESTITUTION
06/17/2011	BENCH WARRANT	
06/17/2011	BI INACTIVE	
04/09/2013	BI ACTIVE	
04/09/2013	BENCH WARRANT - RETURN SERVED	
04/09/2013	RECEIPT	

**WARRANT INFORMATION**

Arrest Warrant issued on 03/18/2009	Status: Returned	Status Date: 01/28/2010
Bench Warrant - Fail to Comply with Sentence of the Court issued on 06/17/2011	Status: Returned	Status Date: 04/09/2013

**BOND INFORMATION****Settings**

03/18/2009

Warrant #49C09001836A0-STA001-20090318

Type: CASH BOND

Amount: \$150.00

06/17/2011

Warrant #49C09001836A0-UJS230-20110617

Type: CASH BOND

Amount: \$230.45

**Surety and Other Bonds**

Cash Bond Posted on 01/28/2010

Status \$150.00JUDGE-CODE: 211  
INACTIVE 09/15/2010**HEARING INFORMATION**

Hearing Type	Hearing Date/Time	Judge	Result	Cancel Reason
Jury Trial	09/22/2010 8:00 AM	Sage, Doyle	Cancelled	
Change of Plea Hearing	09/15/2010 2:30 PM	Sage, Doyle	Held	
Arraignment	09/15/2010 2:30 PM	Sage, Doyle	Held	
Preliminary Hearing	09/15/2010 2:30 PM	Sage, Doyle	Waived	
Sentencing Hearing	09/15/2010 2:30 PM	Sage, Doyle	Held	
Jury Trial	08/24/2010 8:00 AM	Sage, Doyle	Continuance-Requested by Defendant	
Change of Plea Hearing	08/17/2010 3:30 PM	Sage, Doyle	Continuance-Requested by Defendant	
Jury Trial	07/28/2010 8:00 AM	Sage, Doyle	Continuance-Requested by Defendant	
Change of Plea Hearing	07/21/2010 2:30 PM	Sage, Doyle	Cancelled	
Jury Trial	06/30/2010 8:00 AM	Sage, Doyle	Continuance-Requested by Defendant	
Change of Plea Hearing	06/23/2010 2:30 PM	Sage, Doyle	Continuance-Requested by Defendant	
Jury Trial	06/02/2010 8:00 AM	Sage, Doyle	Continuance-Requested by Defendant	

## HEARING INFORMATION

Hearing Type	Hearing Date/Time	Judge	Result	Cancel Reason
Change of Plea Hearing	05/25/2010 2:00 PM	Sage, Doyle	Continuance-Requested by Defendant	
Initial Appearance	04/21/2010 9:00 AM	Sage, Doyle	Held	
Arraignment	04/21/2010 9:00 AM	Sage, Doyle	Held	
Preliminary Hearing	04/01/2010 9:00 AM	Schlimgen, John	Cancelled	
Dispositional Conference	03/17/2010 8:00 AM	zzData, Converted	Held	
Initial Appearance	02/17/2010 9:00 AM	Schlimgen, John	Held	

## FINANCIAL INFORMATION

### BOYLES, JEFFERY ALLEN

Total Financial Assessment	\$1,215.45
Total Payments and Credits	\$1,215.45
Balance Due as of 7/27/2021	\$0.00

### Fee Categories

Court Appointed Attorney Fees	\$200.00
Court Automation Surcharge	\$20.50
Fines and Penalties - State, County or City	\$87.00
Liquidated Costs	\$40.00
Restitution	\$865.45
Victim's Compensation	\$2.50

### Transactions

09/15/2010	Transaction Assessment			\$350.00
09/15/2010	Transaction Assessment			\$864.45
09/15/2010	Conversion	Receipt # 491006763	BOYLES,JEFFREY ALLEN	(\$150.00)
09/15/2010	Transaction Assessment			\$615.45
10/19/2010	Conversion	Receipt # 490075291	BOYLES,JEFFREY,ALLEN	(\$150.00)
10/21/2010	Conversion	Receipt # 491065099	BOYLES,JEFFREY,ALLEN	(\$140.00)
10/26/2010	Conversion	Receipt # 490075291	BOYLES,JEFFREY,ALLEN	(\$100.00)
10/26/2010	Conversion	Receipt # 490075389	BOYLES,JEFFREY,ALLEN	(\$40.00)
02/07/2011	Conversion	Receipt # 491086221	BOYLES,JEFFREY,ALLEN	(\$240.00)
02/08/2011	Conversion	Receipt # 490075389	BOYLES,JEFFREY,ALLEN	(\$240.00)
03/14/2011	Conversion	Receipt # 491093918	BOYLES,JEFFREY,ALLEN	(\$170.00)
05/05/2011	Conversion	Receipt # 490075389	BOYLES,JEFFREY,ALLEN	(\$170.00)
05/19/2011	Conversion	Receipt # 491107236	BOYLES,JEFFREY,ALLEN	(\$285.00)
05/20/2011	Conversion	Receipt # 490075389	BOYLES,JEFFREY,ALLEN	(\$165.45)
04/09/2013	Payment	Receipt # 49-35348	minn co-boyles	(\$230.45)



# South Dakota Unified Judicial System eCourts



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## CASE LEGEND

STATE OF SOUTH DAKOTA VS. BOYLES,JEFFREY,ALLEN

49C04003319A0

Judicial Officer: Severson, Glen A

Type: Criminal Circuit

County: Minnehaha

Date Filed: 7/1/2004

Status: Terminated

## PARTY INFORMATION

### Plaintiff

STATE OF SOUTH DAKOTA  
Address:

### Attorney(s)

SAMPLE, RANDY

### Defendant

BOYLES, JEFFREY ALLEN  
Address: 425 N INDIANA AVE SIOUX FALLS SD 57103  
Date of Birth: 02/02/1983  
Gender: Male  
Race: White  
Height: 5'10"  
Weight: 135  
Eyes: Brown

### Attorney(s)

NICHOLS, SHAWN M

## DISPOSITION INFORMATION

### 1. 22-42-10 (Class 5 Felony) - KEEP PLACE FOR USE OR SALE OF CONTROLLED SUBSTANCE

Offense Date: 07/21/2004  
Arrest Date: 07/21/2004

Citation: NONUM - Citation Date: 07/21/2004

Plea Date: 07/29/2004 - Not Guilty

[A] Disposition Date: 11/09/2004 - Dismissal-Reduction

### 2. 22-42-7 (Class 5 Felony) - DIST/POSS W/INTENT DIST 1OZ LESS 1/2 LB MARJ

Offense Date: 07/21/2004  
Arrest Date: 07/21/2004

Citation: NONUM - Citation Date: 07/21/2004

Plea Date: 11/08/2004 - No Plea Entered

[A] Disposition Date: 11/09/2004 - Dismissal-Reduction

### 3. 22-42-10 (Class 5 Felony) - KEEP PLACE FOR USE OR SALE OF CONTROLLED SUBSTANCE

Offense Date: 07/21/2004  
Arrest Date: 07/21/2004

Citation: NONUM - Citation Date: 07/21/2004

Plea Date: 11/09/2004 - No Plea Entered

Disposition Date: 01/03/2005 - Dismissed-Motion by Prosecutor

### 4. 22-42-7 (Class 5 Felony) - DIST/POSS W/INTENT DIST 1OZ LESS 1/2 LB MARJ

Offense Date: 07/21/2004  
Arrest Date: 07/21/2004

Citation: NONUM - Citation Date: 07/21/2004

Plea Date: 11/09/2004 - Guilty

Disposition Date: 11/09/2004 - Judgment on Plea of Guilty



Sentence Date: 01/03/2005 -

Incarcerated to Penitentiary for 2 Year(s) Concurrent with 2 Year(s) suspended and credit for 0 Day(s) served.

Probation: 2 Year(s)

Fee Totals

Condition(s)

1 , Effective: 01/03/2005 -

EVENT INFORMATION		
Date	Type	Comment
07/01/2004	INDICTMENT	
07/01/2004	BENCH WARRANT	
07/01/2004	CASE FILED	
07/01/2004	BI INACTIVE	
07/22/2004	BI ACTIVE	
07/22/2004	BENCH WARRANT-RETURNED	BENCH WARRANT-RETURNED/SERVED -- INDICTMENT WARRANT
07/22/2004	RETURN OF SERVICE	RETURN OF SERVICE -- ON INDICTMENT WARRANT
07/22/2004	PERSONAL RECOGNIZANCE AND APPEARANCE BOND (2-PAGE)	
09/03/2004	FREE FORM TEXT	MOTION TO WITHDRAW AS COUNSEL
09/03/2004	ORDER	ORDER TO WITHDRAW AS COUNSEL PDO THOMAS-PENA TO SHAWN NICHOLS APPROVED BY RIEPEL
09/07/2004	FREE FORM TEXT	NOTICE OF APPEARANCE
09/07/2004	FREE FORM TEXT	DEFENDANT'S MOTION FOR DISCOVERY
09/07/2004	CERTIFICATE OF SERVICE	
11/08/2004	FREE FORM TEXT	COMPLAINT
11/08/2004	INFORMATION	
01/03/2005	ORDER OF COMMITMENT	
01/03/2005	JAIL FORM	START-TIME = 0000  ENTRY-DATE = 01/03/2005 ENTRY-TIME = 12:00AM WORK-RELEASE = N COMMENTS= 1-3-05 669.DEFT. TAKEN INTO CUSTODY TO BE TRANSP. TO PEN.  JUDGE-CODE = 669 JUDGE-NAME = Severson, Glen A
01/06/2005	SEALED DOCUMENT	
01/12/2005	JUDGMENT AND SENTENCE	
01/20/2005	ACKNOWLEDGMENT OF RECEIPT OF CONVICT	
02/17/2005	VOUCHER FOR COMPENSATION & EXPENSES OF COURT APPOINTED ATTN	VOUCHER FOR COMPENSATION AND EXPENSES OF COURT APPOINTED ATTORNEY
04/05/2005	FREE FORM TEXT	CONDITIONS OF ADULT PROBATION
06/10/2005	DRUG SCREENING/TESTING SUBMISSION FORM	

**EVENT INFORMATION**

Date	Type	Comment
06/10/2005	DRUG SCREENING/TESTING SUBMISSION FORM	
07/13/2005	DRUG SCREENING/TESTING SUBMISSION FORM	
09/14/2005	DRUG SCREENING/TESTING SUBMISSION FORM	
09/14/2005	DRUG SCREENING/TESTING SUBMISSION FORM	
10/07/2005	DRUG SCREENING/TESTING SUBMISSION FORM	
10/07/2005	FREE FORM TEXT	RECEIPT-ACCOUNTING
10/19/2005	REQUEST FOR EXTENSION OF TIME TO PAY FINE/ATTNY FEES/REST	REQUEST FOR EXTENSION OF TIME TO PAY FINE/ATTORNEY FEES/RESTITUTION - DENIED PER JUDGE SEVERSON
11/07/2005	FREE FORM TEXT	SD DRUG SCREENING/TESTING SUBMISSION
04/04/2006	DRUG SCREENING/TESTING SUBMISSION FORM	
04/04/2006	DRUG SCREENING/TESTING SUBMISSION FORM	
04/04/2006	DRUG SCREENING/TESTING SUBMISSION FORM	
04/04/2006	DRUG SCREENING/TESTING SUBMISSION FORM	
04/04/2006	DRUG SCREENING/TESTING SUBMISSION FORM	
05/04/2006	DRUG SCREENING/TESTING SUBMISSION FORM	
06/07/2006	DRUG SCREENING/TESTING SUBMISSION FORM	
07/06/2006	DRUG SCREENING/TESTING SUBMISSION FORM	
07/12/2006	FREE FORM TEXT	ORDER OF DISCHARGE FROM PROBATION SUPERVISION

**WARRANT INFORMATION**

Bench Warrant issued on 07/01/2004      Status: Returned      Status Date: 07/22/2004

**BOND INFORMATION****Settings**

07/01/2004

Warrant #49C04003319A0-UJS230-20040701

Type: PERSONAL RECOGNIZANCE    Amount:

**Surety and Other Bonds**

Personal Recognizance Bond Posted on 07/22/2004      Status JUDGE-CODE: 685  
\$0.00 INACTIVE 01/03/2005

**HEARING INFORMATION**

Hearing Type	Hearing Date/Time	Judge	Result	Cancel Reason
Sentencing Hearing	01/03/2005 2:00 PM	Severson, Glen A	Held	
Change of Plea Hearing	11/08/2004 9:00 AM	Severson, Glen A	Held	



## HEARING INFORMATION

Hearing Type	Hearing Date/Time	Judge	Result	Cancel Reason
Arraignment	11/08/2004 9:00 AM	Severson, Glen A	Held	
Preliminary Hearing	11/08/2004 9:00 AM	Severson, Glen A	Waived	
Jury Trial	10/25/2004 9:00 AM	Severson, Glen A	Cancelled	
Pretrial Conference	10/12/2004 9:00 AM	Severson, Glen A	Held	
Initial Appearance	07/29/2004 10:30 AM	Lieberman, Peter H.	Held	
Arraignment	07/29/2004 10:30 AM	Lieberman, Peter H.	Held	

## FINANCIAL INFORMATION

### BOYLES, JEFFERY ALLEN

Total Financial Assessment	\$785.00
Total Payments and Credits	\$785.00
Balance Due as of 7/27/2021	\$0.00

### Fee Categories

Costs - State, County or City	\$180.00
Court Appointed Attorney Fees	\$550.00
Court Automation Surcharge	\$25.50
Liquidated Costs	\$27.00
Victim's Compensation	\$2.50

### Transactions

01/03/2005	Transaction Assessment			\$243.00
07/25/2005	Conversion	Receipt # 490653175	BOYLES,JEFFREY,ALLEN	(\$50.00)
07/29/2005	Conversion	Receipt # 490654253	BOYLES,JEFFREY,ALLEN	(\$20.00)
08/01/2005	Conversion	Receipt # 490654486	BOYLES,JEFFREY,ALLEN	(\$20.00)
09/08/2005	Conversion	Receipt # 490662249	BOYLES,JEFFREY,ALLEN	(\$30.00)
09/23/2005	Conversion	Receipt # 490665401	BOYLES,JEFFREY,ALLEN	(\$50.00)
10/06/2005	Conversion	Receipt # 490668457	BOYLES,JEFFREY,ALLEN	(\$70.00)
10/20/2005	Conversion	Receipt # 490671278	BOYLES,JEFFREY,ALLEN	(\$70.00)
11/04/2005	Conversion	Receipt # 490674463	BOYLES,JEFFREY,ALLEN	(\$70.00)
11/21/2005	Conversion	Receipt # 490677260	BOYLES,JEFFREY,ALLEN	(\$70.00)
12/05/2005	Conversion	Receipt # 490679737	BOYLES,JEFFREY,ALLEN	(\$50.00)
12/29/2005	Conversion	Receipt # 490684343	BOYLES,JEFFREY,ALLEN	(\$140.00)
02/09/2006	Conversion	Receipt # 490693444	BOYLES,JEFFREY,ALLEN	(\$45.00)
03/23/2006	Conversion	Receipt # 490702238	BOYLES,JEFFREY,ALLEN	(\$40.00)
04/10/2006	Conversion	Receipt # 490705754	BOYLES,JEFFREY,ALLEN	(\$60.00)